

Property, Stock and Business Agents Regulation 2003

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New South Wales

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New South Wales

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Property, Stock and Business Agents Regulation 2003



New South Wales

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Property, Stock and Business Agents Regulation 2003*.

2 Commencement

This Regulation commences on 1 September 2003.

3 Definitions

In this Regulation:

bank includes authorised deposit-taking institution.

buyers agent means a real estate agent whose licence is subject to a condition that restricts the holder to acting as a real estate agent for a prospective purchaser of land.

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

visible form means any record of information by means of which the information can be produced on demand in permanent legible form in the English language.

4 Notes

Notes included in this Regulation do not form part of this Regulation.

Part 2 Conduct of agency business

5 Extended functions of real estate agents and real estate salespersons

The definition of **real estate agent** in the Act includes a person who carries on business as an auctioneer or agent in respect of any parcel of rural land that has an area of up to 20 hectares.

Note—

As the functions of a real estate agent will now include acting on the sale or purchase of rural land with an area

of up to 20 hectares, real estate salespersons will also be able to exercise this function.

6 Section 31 exemptions—person in charge at place of business

- (1) The following matters are to be taken into account by the Director-General in considering whether to grant an exemption from a provision of section 31 (1), (2) or (3) of the Act that will authorise a licensee to be the person in charge of business (***the licensee-in-charge***) at more than one place of business:
- (a) reasons why the exemption is needed,
 - (b) the licensee's previous experience as licensee-in-charge at a place of business of a licensee,
 - (c) the licensee's capacity to properly supervise the conduct of business at more than one place of business,
 - (d) office systems proposed to be established at each place of business concerned to provide for accountability to the licensee-in-charge at each of those places of business,
 - (e) proposed staffing and office management arrangements at each place of business concerned,
 - (f) whether there is a centralised trust account for the deposit of trust money received in connection with the businesses for which the licensee will be licensee-in-charge pursuant to the exemption,
 - (g) the licensee's capacity to comply with any guidelines issued by the Director-General under section 32 (4) of the Act,
 - (h) the licensee's record in relation to compliance with the conditions of a licence or certificate of registration held at any time by the licensee under the Act or the 1941 Act, and in relation to compliance with the provisions of the Act, the 1941 Act and the regulations under those Acts,
 - (i) employer references in relation to the licensee's experience as a licensee-in-charge.
- (2) The following matters are to be taken into account by the Director-General in considering whether to grant an exemption from a provision of section 31 (4) of the Act that will authorise a licensee employed as the person in charge of business (***the licensee-in-charge***) at a place of business to exercise functions or provide services on behalf of 2 or more licensees at that place:
- (a) reasons why the exemption is needed,
 - (b) the licensee's previous experience as licensee-in-charge at a place of business of

a licensee,

- (c) the licensee's capacity to properly supervise the conduct of business of more than one 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 pursuant to the exemption,
- (f) the licensee's capacity to comply with any guidelines issued by the Director-General under section 32 (4) of the Act,
- (g) the licensee's record in relation to compliance with the conditions of a licence or certificate of registration held at any time by the licensee under the Act or the 1941 Act, and in relation to compliance with the provisions of the Act, the 1941 Act and the regulations under those Acts,
- (h) employer references in relation to the licensee's experience as a licensee-in-charge.

(3) In this clause:

1941 Act means the *Property, Stock and Business Agents Act 1941*.

7 Sharing of commission

(1) There is an exemption from section 33 of the Act if:

- (a) the transaction concerned relates solely to livestock and the person with whom the licensee enters into an arrangement or acts in conjunction in respect of that 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 any such transaction, or
- (b) the person with whom the licensee enters into an arrangement or acts in conjunction as referred to in that section 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 concerned.

(2) Each of the following Acts is declared to be a corresponding Act for the purposes of section 33 of the Act:

Estate Agents Act 1980 of Victoria

Property Agents and Motor Dealers Act 2000 of Queensland

Agents Act 1968 of the Australian Capital Territory

Land Agents Act 1994 of South Australia

Agents Licensing Act of the Northern Territory

Real Estate and Business Agents Act 1978 of Western Australia

Auctioneers and Real Estate Agents Act 1991 of Tasmania

8 Subagency agreements

- (1) Each of the following classes of agreement is exempt from section 34 (Non-commercial subagency agreements to be in writing) of the Act:
 - (a) agreements between licensees who are members of a multiple listing organisation approved by the Director-General from time to time for the purposes of this clause,
 - (b) agreements between licensees who are parties to a franchise agreement approved by the Director-General from time to time for the purposes of this clause,
 - (c) agreements for services relating only to livestock.
- (2) An approval given by the Director-General for the purposes of this clause may be given generally or be limited by reference to specified factors.

9 Itemised account

- (1) A request for an itemised account under section 36 (3) of the Act must be made in writing.
- (2) A request for an itemised account under section 36 (3) or 101 of the Act may be served on the licensee concerned by:
 - (a) delivering it personally to the licensee,
 - (b) leaving it for the licensee at a place of business of the licensee,
 - (c) sending it by post to the licensee at the address of a place of business of the licensee,
 - (d) sending it by facsimile transmission to a number specified by the licensee (in correspondence or otherwise) as a number to which facsimile transmissions to the licensee may be sent.
- (3) An itemised account requested under section 36 (3) or 101 of the Act may be provided to the person who made the request by:
 - (a) delivering it personally to the person,

- (b) leaving it for the person at an address specified as the person's address in the request or (if an address is not specified in the request) in an agency agreement,
- (c) sending it by post to the person at an address specified as the person's address in the request or (if an address is not specified in the request) in an agency agreement,
- (d) sending it by facsimile transmission to a number specified by the person (in correspondence or otherwise) as a number to which facsimile transmissions to the person may be sent.

10 Provision of financial and investment advice

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

11 Rules of conduct

- (1) The rules set out in Schedules 1-6 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 licensees and registered persons (in addition to any other Schedule or Schedules that may be applicable to particular kinds of licensees or

registered persons),

- (b) Schedule 2, Part 1, applies to real estate agents and registered persons they employ and Schedule 2, Part 2, applies to real estate agents, registered persons they employ and on-site residential property managers,
 - (c) Schedule 3 applies to stock and station agents and registered persons they employ,
 - (d) Schedule 4 applies to business agents and registered persons they employ,
 - (e) Schedule 5 applies to buyers' agents and registered persons they employ,
 - (f) Schedule 6 applies to strata managing agents, community managing agents, on-site residential property managers and real estate agents engaged in property management, and registered persons they employ.
- (2) In each of Schedules 1–6, a reference to an agent includes a reference to a registered person to whom the Schedule applies.
 - (3) In Schedule 4, a reference to a business includes a reference to a professional practice.
 - (4) A licensee or registered person who fails without reasonable excuse to observe a rule prescribed by subclause (1) is guilty of an offence.

Maximum penalty: 40 penalty units in the case of a corporation or 20 penalty units in any other case.

12 Agency agreements—exemptions

- (1) An agreement for the performance of services that relate only to livestock is exempt from section 55 of the Act.
- (2) A licensee is exempt from the operation of section 55 of the Act in respect of services performed by the licensee pursuant to an appointment as a strata managing agent or managing agent appointed under section 162 of the *Strata Schemes Management Act 1996* or section 85 of the *Community Land Management Act 1989*.

13 Contents of agency agreements

- (1) For the purposes of section 55 of the Act, an agency agreement must comply with the requirements of Schedules 7–14 as to the terms, conditions and other provisions that an agency agreement must or must not contain, with the application of those Schedules to be as follows:
 - (a) Schedule 7 applies to all agency agreements (in addition to any other Schedule that may be applicable to the agency agreement),

- (b) Schedule 8 applies to an agency agreement under which the agent will act for the seller on the sale of residential property,
 - (c) Schedule 9 applies to an agency agreement under which the agent will act for the buyer on the purchase of land,
 - (d) Schedule 10 applies to an agency agreement under which the agent will act for the seller on the sale of rural land,
 - (e) Schedule 11 applies to an agency agreement under which the agent will act for the seller on the sale of a business or professional practice (with a reference in that Schedule to a business including a reference to a professional practice),
 - (f) Schedule 12 applies to an agency agreement under which the agent will provide property management services in respect of the leasing of residential property or rural land,
 - (g) Schedule 13 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 14 applies to an agency agreement under which the agent will exercise the functions of a strata managing agent or community managing agent.
- (2) A reference in Schedules 7–14 to **property** (other than as a reference to residential property) includes a reference to any land.
- (3) An agency agreement must not contain any term, condition or other provision that is inconsistent with a term, condition or other provision that the agency agreement is required to contain by this clause, but otherwise the terms, conditions and other provisions that an agency agreement can contain is not limited by this clause.
- (4) For the purposes of section 55 (3) of the Act, each of the following methods of service is prescribed as a means by which an agency agreement may be served on a person:
- (a) for service on an individual:
 - (i) delivering it personally to the person,
 - (ii) leaving it at the person's place of residence, or at an address provided in the agency agreement as the person's address for service, with a person who apparently resides there and who has apparently reached the age of 16 years,
 - (iii) posting it to the person at the person's residential address or postal address as disclosed in the agency agreement or at an address provided in the agency agreement as the person's address for service,
 - (b) for service on a body corporate:

- (i) delivering it personally to the secretary of the body corporate or any other person concerned in the management of the body corporate,
 - (ii) leaving it at the body corporate's principal place of business with a person who is apparently employed there and who has apparently reached the age of 16 years,
 - (iii) posting it to the body corporate at the address of its principal place of business or postal address, as disclosed in the agency agreement.
- (5) Subclause (1) does not apply to an agency agreement entered into before the commencement of this clause.
- (6) An agency agreement entered into before the commencement of this clause must contain such terms (if any) as it was required to contain under section 42AA of the *Property, Stock and Business Agents Act 1941* at the time the agreement was entered into.

Part 3 Auctions

14 Definition of "property"

In this Part, **property** means residential property or rural land.

Note—

The terms **residential property** and **rural land** are defined in section 3 of the Act.

15 Making the Bidders Record

- (1) The Bidders Record for an auction of property that is made and kept for the purposes of section 68 of the Act must:
- (a) be in the English language, and
 - (b) record the date and place of the auction, and
 - (c) record the address of the property, and
 - (d) record the name and licence number of the auctioneer conducting the auction, and
 - (e) record the name of the owner of the property at the time of the auction, and
 - (f) record the name and licence number of the selling agent for the auction, and
 - (g) if the property is sold at the auction, indicate which of the persons named in the Bidders Record is the successful bidder and the sale price, and
 - (h) if the property is not sold at the auction, record the highest bid accepted at the auction.

Note—

A Bidders Record made by a licensee is one of the licensee's records for the purposes of Part 8 (Records) of the Act and is to be kept by the licensee. There are no restrictions on the technology that can be used to make and keep a Bidders Record. A Bidders Record can be made and kept on paper or by electronic means.

- (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:
 - (a) the Bidders Record must also record the agent's licence number, and
 - (b) the Bidders Record may record the address of the agent's registered office as the agent's address.
- (3) If a person is registering to bid on behalf of a body corporate:
 - (a) there is an exemption from the requirement under section 68 (2) of the Act that the relevant details of the person bidding include the number or other identifier of proof of identity of the body corporate as referred to in section 68 (2) (b) of the Act, and
 - (b) there is an exemption from the requirement under section 69 (1) (b) of the Act 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.
- (4) 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 section 68 (2) of the Act that the relevant details of the person bidding include details of the other person as specified in section 68 (2) (b) of the Act.
- (5) 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 section 69 (1) (b) of the Act if details of the person on whose behalf the agent is to bid are established by the production of a copy of the agency agreement pursuant to which the agent will be bidding.
- (6) An entry in a Bidders Record may only be made by the agent who makes the Bidders Record or by an employee of that agent acting on behalf of the agent. An agent who makes a Bidders Record must not permit a person to make an entry in the Bidders Record unless the person is authorised by this subclause to make the entry.

Maximum penalty: 40 penalty units in the case of a corporation or 20 penalty units in any other case.
- (7) If more than one property is to be offered for sale at an auction sale, a single Bidders Record may be made so as to apply to more than one (or all) of the properties to be offered so that the required details of a person who will be entitled to bid at the

auction of any of the properties concerned need only be entered in the Bidders Record once, but without otherwise affecting the requirement for the separate recording in respect of each of those properties of the details required by subclauses (1) and (2).

Note—

When an auction involves a number of properties and a number of different licensees, subclause (7) gives the licensees concerned the option of each making their own Bidders Record for the properties they are auctioning or relying on a single Bidders Record made by or on behalf of the auctioneer for all of the properties to be auctioned.

16 Keeping the Bidders Record

- (1) A licensee who acts on the sale of property that is offered for sale by auction must make and keep as part of the records that the licensee is required to make by section 104 of the Act in respect of the sale a record of the name, business address and licence number of the licensee who made the Bidders Record for the auction.

Note—

The licensee who makes a Bidders Record is responsible for keeping it.

- (2) A licensee who keeps a Bidders Record in electronic form must also keep, as part of the licensee's records with respect to auction sales to which the Bidders Record relates, a record of such details as will enable the Bidders Record to be located and accessed in the electronic records of the licensee.

17 Proof of identity for Bidders Record

- (1) Any of 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 that is issued by the government or a statutory authority of New South Wales, the Commonwealth, another State or a Territory, or by an authorised deposit-taking institution, and shows the name and address of the person,
 - (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 the government or a statutory authority of New South Wales, the Commonwealth, another State or a Territory, or by an authorised deposit-taking institution,
 - (c) a card or document that is issued by the government or a statutory authority of New South Wales, the Commonwealth, another State or a Territory, or by an authorised deposit-taking institution and that shows the name of the person, together with a statutory declaration by the person as to the person's address,
 - (d) a passport issued by another country that shows the person's name, together

with:

- (i) a card or document that is issued by an organisation or person other than the person concerned and that shows the person's address, or
 - (ii) a statutory declaration by the person as to the person's address,
- (e) a motor vehicle driver's licence issued in another country that shows the person's name, together with:
- (i) a card or document that is issued by an organisation or person other than the person concerned and that shows the person's address, 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 with the identifying number allocated for the purposes of identification at the auction unless the person's identity is established by means of proof of identity that may be used for the purposes of any entry in the Bidders Record under section 69 of the Act.

(3) An agent or employee of an agent who provides an identifying number to a person in contravention of subclause (2) is guilty of an offence.

Maximum penalty: 20 penalty units.

18 Conditions of sale by auction

- (1) The following conditions are prescribed as applicable to and in respect of the sale by auction of land or livestock:
- (a) The principal's reserve price must be given in writing to the auctioneer before the auction commences.
 - (b) A bid for the seller cannot be made unless the auctioneer has, before the commencement of the auction, announced clearly and precisely the number of bids that may be made by or on behalf of the seller.
 - (c) The highest bidder is the purchaser, subject to any reserve price.
 - (d) In the event of a disputed bid, the auctioneer is the sole arbitrator and the auctioneer's decision is final.
 - (e) The auctioneer may refuse to accept any bid that, in the auctioneer's opinion, is not in the best interests of the seller.
 - (f) A bidder is taken to be a principal 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 cannot be made or accepted after the fall of the hammer.

(h) As soon as practicable after the fall of the hammer the purchaser is to sign the agreement (if any) for sale.

(2) The following conditions, in addition to those prescribed by subclause (1), are prescribed as applicable to and in respect of the sale by auction of residential property or rural land:

(a) All bidders must be registered in the Bidders Record and display an identifying number when making a bid.

(b) One bid only may be made by or on behalf of the seller. This includes a bid made by the auctioneer on behalf of the seller.

(c) When making a bid on behalf of the seller or accepting a bid made by or on behalf of the seller, the auctioneer must clearly state that the bid was made by or on behalf of the seller or auctioneer.

(3) The following condition, in addition to those prescribed by subclause (1), is prescribed as applicable to and in respect of 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 that 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 that amount cannot reasonably be determined immediately after the fall of the hammer—before the close of the next business day following determination of that amount,

unless 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.

19 Notification of auction conditions

(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 by means of a notice that:

(a) sets out the conditions of the sale clearly and legibly written or printed in the English language, and

(b) is exhibited in a conspicuous position so as to be clearly visible to, and available for inspection by, any person attending the auction before and during the auction.

- (2) If a stock and station agent or real estate agent conducts an auction sale of land or livestock comprising more than one lot, or a stock and station salesperson conducts an auction sale of livestock comprising more than one lot, and one or more of the conditions of sale for any one or more of those lots are different from the conditions of sale for all or most of the other lots, the agent or salesperson concerned may notify the different conditions by reciting those conditions aloud in a clear and precise manner immediately before offering that lot for sale.

Maximum penalty: 40 penalty units in the case of a corporation or 20 penalty units in any other case.

20 Warnings about bidders' obligations

- (1) The notice required to be given by section 78 (3) of the Act is to be in the following form:

Penalty for collusive practices

It is an offence against the [Property, Stock and Business Agents Act 2002](#) for a person to do any 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 any of the following:

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

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

- (2) The notice required to be given by section 83 (2) of the Act is to 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.

- (3) Each notice must:

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

Note—

A notice under this clause may be combined with the notice of auction conditions.

Part 4 Trust money

21 Banking of trust money

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

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

Maximum penalty: 40 penalty units in the case of a corporation or 20 penalty units in any other case.

22 Records of trust money to be kept by licensees

- (1) A licensee must keep the records required by this Part in visible form.
- (2) A licensee must keep the records required by this Part at the licensee's registered office, unless the licensee keeps those records as permitted by subclause (4).
- (3) If a computer system is used for the purpose of recording any information that is reproduced in the records required by this Part, the licensee must keep the computer control records required by clause 24 at the licensee's registered office.
- (4) A licensee may, at each separate place of business at which the licensee's business is conducted, keep the records required by this Part for business transacted at that place of business.
- (5) 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 clause 31 for that month, and
 - (b) maintain a summary of the total of trust money disclosed in the trial balance statements for that month.

Maximum penalty: 40 penalty units in the case of a corporation or 20 penalty units in any other case.

23 Additional requirements for strata managing agents and community managing agents

- (1) A strata managing agent or community managing agent must keep either of the following additional records:
 - (a) a single trust account ledger that is in a form permitting each account for an owners corporation, community association, precinct association or neighbourhood

association for or on behalf of which the agent holds any money to be physically removed from the ledger,

(b) a separate trust account ledger for each such owners corporation, community association, precinct association or neighbourhood association.

(2) A strata managing agent or community managing agent must ensure that each ledger kept for an owners corporation, community association, precinct association or neighbourhood association contains sufficient information to enable the name of the owners corporation, community association, precinct association or neighbourhood association for which it is kept to be identified.

Maximum penalty: 40 penalty units in the case of a corporation or 20 penalty units in any other case.

24 Computer systems control

(1) If a licensee maintains records for the purposes of this Part by means of a computer system, the licensee must comply with this clause in relation to the records.

(2) The licensee must maintain a record, compiled in chronological sequence, of all changes (by creation, amendment or deletion) to any of the following information:

(a) principal's name,

(b) principal's address,

(c) principal's code reference number, if any,

(d) agency description,

(e) trust account number,

disclosing the details of the information before and after the change.

(3) The licensee must ensure, in respect of any journal:

(a) that entries balance before entries are made in the ledger, and

(b) that any journal reference numbers are allocated in sequence under program control.

(4) The licensee must ensure in respect of any ledger that no program 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 such a manner as to enable the production in permanent legible form, on demand, of a separate chronological report of all such occurrences.

(5) The licensee must ensure in respect of any ledger that no program enables the

deletion of an account unless:

- (a) the balance of the account is zero, and
 - (b) the account when deleted is retained (as it was immediately before deletion) in visible form.
- (6) The licensee must ensure that any entry in a record produced in visible form appears in chronological sequence.
- (7) The licensee must ensure that a report, or each page of or entry in a report, is numbered sequentially under program control in a manner that enables the completeness of the records required to be kept by this Part to be conveniently verified.
- (8) The licensee must ensure that no amendment to the particulars of a transaction already recorded can be made otherwise than by a separate transaction effecting the amendment.
- (9) The licensee must ensure that each program requires input in each field of a data entry screen intended to receive information required by this Part to be included in records.
- (10) The licensee must ensure:
- (a) that a back-up copy of all records to which this clause refers is made on a computer disk or magnetic tape or by other electronic means not less frequently than once each month, and
 - (b) that the most recent back-up copy is kept in such a place at a separate location that any incident (such as fire, or a power or disk failure) that could adversely affect the records would not also affect the back-up copy.

Maximum penalty: 40 penalty units in the case of a corporation or 20 penalty units in any other case.

25 Receipts for trust money

- (1) A licensee must, immediately on receiving money for or on behalf of any person, prepare or cause to be prepared a receipt in accordance with this clause.
- (2) When a receipt is being prepared by a licensee:
- (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 clause

28 (Record of trust account transactions).

- (3) The following particulars must be shown on a 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 respect of which the money was paid,
 - (g) the amount of money received and whether (or the extent to which) it was paid in cash or by cheque, by electronic funds transfer or otherwise.
- (4) Receipts must be prepared in the numerical order of the series to which they belong.
- (5) The original of a receipt must be issued, on demand, to the person from whom the trust money is received.
- (6) A licensee must retain:
- (a) any original receipt that is not issued to the person from whom the trust money is received, and
 - (b) any original receipt that is cancelled after it is prepared, and
 - (c) duplicate receipts.
- (7) When a receipt is issued by a licensee in respect of rent collected, there must be shown on the receipt (in addition to the particulars required by subclause (3)) the date to which rent has been calculated and the position of the rental account as at that date.
- (8) When a strata managing agent or community managing agent issues a receipt for a payment received in the course of acting as a strata managing agent or community managing agent, the agent must (in addition to the particulars required by subclause (3)) show on the receipt the following particulars:
- (a) if the payment is in respect of a contribution referred to in section 75 or 76 of the *Strata Schemes Management Act 1996*, the fact that it is made in respect of that contribution and the lot number in respect of which the contribution is paid,
 - (b) if the payment is in respect of a regular periodic contribution determined under

section 75 or 76 of the *Strata Schemes Management Act 1996*, the period in respect of which the payment is made,

- (c) if the payment is in respect of a contribution referred to in clause 13 of Schedule 1 to the *Community Land Management Act 1989*, the fact that it is made in respect of that contribution, a statement identifying the land or premises in respect of which the liability to make the contribution is imposed and, if the contribution is a regular periodic contribution, the period in respect of which it is made,
- (d) if the payment was received in respect of more than 1 matter, the apportionment of that payment between those matters,
- (e) if the receipt is issued from a general trust receipt book, the name of the owners corporation, community association, precinct association or neighbourhood association for or on behalf of which the payment is received.

Maximum penalty: 40 penalty units in the case of a corporation or 20 penalty units in any other case.

26 Payment of trust money by cheque or electronic funds transfer

- (1) Trust money must not be drawn from a licensee's trust account otherwise than by cheque or electronic funds transfer in accordance with this clause.
- (2) Each cheque must:
 - (a) be machine numbered in series, and
 - (b) be marked "not negotiable", and
 - (c) not be payable to cash, and
 - (d) contain the name of the licensee or (if appropriate) of the licensee's firm and the words "Trust Account", and
 - (e) be signed by the licensee or another person authorised by or under clause 33 to sign the cheque.
- (3) The licensee must ensure that cheques are drawn in the numerical order of the series to which they belong and that for each cheque a record is kept of:
 - (a) the number and date of issue of the cheque, the name of the payee and the amount of the cheque, and
 - (b) 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, and
 - (c) the reason for which the cheque was drawn.

- (4) If the licensee maintains an accounting system that (at the same time as that at which, and in the same operation as that in which, a cheque is drawn) causes the particulars required by subclause (3) to be entered directly in the cash book required to be kept under clause 28, the entry of the particulars in the cash book is a sufficient compliance with the record keeping requirements of subclause (3).
- (5) The licensee must ensure that, for each electronic funds transfer, a record is kept of:
 - (a) the name of the person effecting the transfer and, if the transfer is effected under the direction of some other person, or under an authority delegated under clause 33, the name of the person under whose direction or under whose delegation the transfer is effected, and
 - (b) the reference number or other particulars sufficient to identify the transfer, the date of the transfer, the name of the payee and the amount transferred to or from each ledger account, and
 - (c) details identifying the ledger accounts to be debited and the name and ledger reference number of each principal on whose behalf the transfer was made, and
 - (d) particulars of the reason for the transfer.

Maximum penalty: 40 penalty units in the case of a corporation or 20 penalty units in any other case.

27 Trust deposits

- (1) A licensee who makes a deposit of money to the licensee's trust account must ensure:
 - (a) that the relevant deposit book or other written deposit record is produced to the bank when the deposit is made, and
 - (b) that 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, the name of the drawer, the name and branch of the bank on which the cheque is drawn and the amount of each cheque, and
 - (c) that a duplicate of the particulars of each deposit is retained by the licensee.
- (2) This clause does not apply to a deposit of money made directly to a licensee's trust account, electronically or otherwise.

Maximum penalty: 40 penalty units in the case of a corporation or 20 penalty units in any other case.

28 Record of trust account transactions

- (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 nature of a cash book in which the pages are consecutively numbered and on the respective 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) in the case of money received or disbursed by means of 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 the particulars required by clause 25 (3) (a), (b) and (d)-(g) to be entered in a receipt for the money, together with the date of the deposit of the money to the trust account and the amount of the deposit.
- (4) When money is paid out of the trust account, the licensee must enter into the record the particulars required by clause 26 (3) to be recorded for a cheque or required by clause 26 (5) to be recorded for an electronic funds transfer.
- (5) At the end of each named month, the licensee must balance the cash book or other record and either:
 - (a) carry forward the balance to the commencement of the next month, or
 - (b) carry forward the balance to a ledger account provided for the purpose.
- (6) The licensee must, at the end of each named month, 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: 40 penalty units in the case of a corporation or 20 penalty units in any other case.

29 Journal

- (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, is to be numbered consecutively.

Maximum penalty: 40 penalty units in the case of a corporation or 20 penalty units in any other case.

30 Trust account ledger

- (1) A licensee must maintain a separate ledger account for trust money received on behalf of or paid to each principal.
- (2) The ledger account must include the name of the principal, a reference number or other identification and particulars of each transaction affecting trust money.
- (3) Those particulars 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: 40 penalty units in the case of a corporation or 20 penalty units in any other case.

31 Trust account ledger trial balance

- (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 that 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 that month by stating the name of the principal, the reference number or other identification and 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 that month, and
- (d) show a comparison between that total and the balance in the cash book reconciled with the balance in the trust account as required by clause 28 (6).

Maximum penalty: 40 penalty units in the case of a corporation or 20 penalty units in any other case.

32 Furnishing of particulars of trust account or transactions

A licensee served with a requisition under section 100 of the Act must furnish the required statement in writing:

- (a) by delivering the statement to the Director-General, or a member of the staff of the Department nominated by the Director-General for the purpose of receiving such statements, at the address of the Department appearing in the requisition, or
- (b) by sending the statement by registered post to the Director-General at the address of the Department appearing in the requisition so as to be received, by the Director-General or a member of staff so nominated, within 7 days after service of the requisition.

33 Signing of cheques or effecting electronic funds transfers—trust account

- (1) A licensee that is a corporation or who is a sole proprietor or a partner has authority to sign a cheque (a **trust cheque**) drawn on, or to effect an electronic funds transfer (a **trust EFT**) from, the trust account required to be maintained by section 86 of the Act.
- (2) A licensee in charge of a place of business has authority to sign a trust cheque or effect a trust EFT.
- (3) A licensee who has authority otherwise than as a delegate to sign trust cheques or effect trust EFTs may delegate that authority:
 - (a) if the licensee is a corporation, to each director of the corporation who is the holder of a licence or certificate under the Act and to not more than 2 employees at each place of business of the corporation, or
 - (b) if the licensee is a sole proprietor or a partner, to not more than 2 employees at each place of business of the sole proprietor or partnership, or
 - (c) if the licensee is a person in charge of a place of business, to not more than 2 employees at the place of business.
- (4) The delegation must be in writing and signed by the licensee and the delegate and may be revoked by the delegator by giving written notice of revocation to the delegate.

- (5) A delegation in force under this clause authorises the delegate to sign trust cheques or effect trust EFTs to which the delegation relates:
- (a) (except in the case of a delegation by a licensee that is a corporation) only if the delegator is unable to sign the cheque or effect the transfer with due expedition because of his or her being sick or injured or absent for good reason, and
 - (b) subject to such terms and conditions (whether relating to the value of the cheques or transfers or the number of signatories or not) as may be stated in the instrument of delegation.
- (6) This clause does not remove any additional prohibition or restriction on the signing of trust cheques or the effecting of trust EFTs made by the constitution or the terms of the partnership agreement of any company or partnership concerned.
- (7) A licensee who purports to delegate his or her authority to sign a trust cheque or effect a trust EFT otherwise than in accordance with this clause is guilty of an offence.
- (8) A person who signs a trust cheque or effects a trust EFT purporting to do so as the delegate of a licensee but who has not been authorised to do so in accordance with this clause is guilty of an offence.

Maximum penalty (subclauses (7) and (8)): 40 penalty units in the case of a corporation or 20 penalty units in any other case.

34 Exemptions

Sections 90 (Interest earned on trust accounts to be paid to Statutory Interest Account) and 91 (Monthly returns by authorised deposit-taking institutions) of the Act 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

35 Records and book entries to be in English language

A licensee must ensure that all written records required to be made or produced by the licensee, and all entries in books of account required to be kept by the licensee, by the provisions of the Act and this Regulation, are in the English language.

Maximum penalty: 40 penalty units in the case of a corporation or 20 penalty units in any other case.

Note—

There are no restrictions on the technology that can be used to make and keep records. Records can be made and kept on paper or by electronic means.

36 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) Immediately after entering into an agreement for the purchase of livestock as an agent, a stock and station agent must record the following particulars:
 - (a) the name and address of the other person,
 - (b) a description of the livestock to be purchased,
 - (c) the number of livestock to be purchased.
- (3) Immediately after purchasing livestock as an agent, a stock and station agent must record the following particulars:
 - (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) the lot number or numbers, if the livestock was sold as a lot or as lots,
 - (g) the name supplied pursuant to section 83 of the Act as the name of the purchaser of each lot of livestock, if the purchase was by auction,
 - (h) the price for which the livestock was purchased per kilogram of live weight or per head,
 - (i) the details of the live weight weighing, if the livestock was purchased on a live weight basis,
 - (j) the total price for which the livestock was purchased,
 - (k) a description of the livestock that is sufficient to identify the livestock.

Maximum penalty: 40 penalty units in the case of a corporation or 20 penalty units in any other case.

37 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) Immediately after being engaged to sell livestock by auction as an agent, a stock and station agent must record the following particulars:
- (a) the name of the owner of the livestock,
 - (b) the number of livestock to be sold,
 - (c) a description of the livestock that is sufficient to identify the livestock.

In the case of a sale by auction, the record must be made for each lot of the livestock and each lot number must be recorded.

- (3) Immediately after selling livestock as an agent, a stock and station agent must record the following particulars for each lot of livestock sold:
- (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 section 83 of the Act by the successful bidder 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) the details of the live weight weighing, if the livestock was sold on a live weight basis,
 - (e) the total price for which the livestock was sold.

Maximum penalty: 40 penalty units in the case of a corporation or 20 penalty units in any other case.

38 Copy of accounts of owners corporation to be kept as record

A strata managing agent served with a notice of resolution of the executive committee of an owners corporation under section 105 (2) of the *Strata Schemes Management Act 1996* that requires the agent to deliver any records or books of account of the owners corporation kept by the agent must, before delivering them:

- (a) prepare a true copy of the records or books of account the subject of the notice of resolution for retention by the agent, and
- (b) certify in writing on the copy that the copy is a true copy of those records or books of account.

Maximum penalty: 40 penalty units in the case of a corporation or 20 penalty units in any other case.

39 Report to be prepared by managing agent

- (1) A managing agent who holds or ceases to hold the money in a fund established by an owners corporation under section 66 or 69 of the *Strata Schemes Management Act 1996* or by an association under Schedule 1 to the *Community Land Management Act 1989* must comply with this clause.
- (2) The agent must prepare a report relating to the management of each such fund during the period since the person last commenced to act as managing agent for the owners corporation or association or since the person last prepared a report under this clause for the owners corporation or association.
- (3) Such a report must be signed by the agent and forwarded to the treasurer of the owners corporation or association at the following times:
 - (a) if the money is held in a separate trust account kept for the owners corporation or association—at least once in every 6 months,
 - (b) if the money is not held in a separate trust account kept for the owners corporation or association—at least once in every 3 months,
 - (c) if the agent ceases to act as managing agent for the owners corporation or association—within 14 days after termination of the agency agreement.
- (4) Such a report (other than one resulting from the termination of an agency agreement) must have been completed no earlier than one month before it is forwarded to the treasurer.
- (5) Each report must:
 - (a) state the name and address of the owners corporation or association for whom the report is prepared, and
 - (b) specify the period in respect of which the report is prepared, and
 - (c) state the date of completion of the report, and
 - (d) if the report is required because of the termination of an agency agreement, reconcile all receipts and payments with the statements from the relevant bank up to the time of termination.
- (6) A report must also contain the following particulars for the fund or, if more than one, for each fund of the owners corporation or association:
 - (a) the amount of contribution to that fund levied during the period to which it relates in respect of each of the lots in the scheme concerned,
 - (b) the amount of contribution to that fund paid during that period in respect of each of those lots,

- (c) the amount of contribution to that fund levied in respect of each of those lots but not paid as at the date of the report,
 - (d) the amount of any money received into that fund otherwise than as such a contribution and a description of the sources of that money,
 - (e) the amount of any money actually expended from that fund on behalf of the owners corporation or association and the amount of any money due to be paid from that fund but not actually paid as at the date of the report,
 - (f) the amount of any money that is expected to become due and payable from that fund by the owners corporation or association before the next report is prepared,
 - (g) the amount of any money standing to the credit of that fund in a bank and the name of the account at the bank,
 - (h) the amount of any money standing to the credit of that fund invested otherwise than in a bank and, if so, where it is invested,
 - (i) the total amount of money standing to the credit of that fund.
- (7) The managing agent who prepared the report must retain a copy of the report at the agent's registered office for 3 years from the date on which the report was prepared.
- (8) In this clause:

managing agent means strata managing agent or community managing agent.

Maximum penalty: 40 penalty units in the case of a corporation or 20 penalty units in any other case.

40 Managing agent to permit executive committee to inspect records

- (1) A strata managing agent or community managing agent must permit, on demand made at any reasonable time, any member of the executive committee of an owners corporation, community association, precinct association or neighbourhood association for whom the agent acts as managing agent to inspect any records or books of account of the corporation or association.
- (2) A strata managing agent or community managing agent must, within 14 days of being appointed by an owners corporation, community association, precinct association or neighbourhood association to act as managing agent, give to the corporation or association a written authority directing the bank or any other person or body with which any money of the corporation or association is invested to disclose to a member of the executive committee of the corporation or association, at the request of the member, any information relating to that money.

Maximum penalty: 40 penalty units in the case of a corporation or 20 penalty units in any

other case.

Part 6 General

41 Complaints and discipline

- (1) The following provisions of the Act are prescribed as provisions that remain applicable to a suspended licence or certificate of registration for the purposes of section 192 of the Act:
 - (a) section 74 (Requirement to substantiate selling price estimates—residential property),
 - (b) section 100 (Director-General may require information),
 - (c) section 107 (Power to require production of licensee’s records),
 - (d) sections 111 (Requirement for audit) and 113 (Statutory declaration required when no trust money held or received), except when a receiver or manager has been appointed,
 - (e) section 179 (Production of documents),
 - (f) section 184 (Powers of accounts examiner),
 - (g) section 211 (Fraudulent conversion and false accounts of money received by licensee or registered person),
 - (h) section 212 (Fraudulent accounts for expenses, commission and other charges).
- (2) The following provisions of this Regulation are prescribed as provisions that remain applicable to a suspended licence or certificate of registration for the purposes of section 192 of the Act:
 - (a) clause 9 (Itemised account),
 - (b) clause 32 (Furnishing of particulars of trust account or transactions),
 - (c) clause 40 (Managing agent to permit executive committee to inspect records).

42 Levies

A notice to a licensee to pay a levy imposed under section 169 (1) of the Act is prescribed for the purposes of section 169 (4) of the Act if the notice is signed by the Director-General and contains the following particulars:

- (a) the amount of the levy payable by the licensee,
- (b) the date by which and the manner in which the amount of the levy is payable,

- (c) a note, in terms of section 169 (4) of the Act, as to the consequences of a failure by a licensee to pay the levy,
- (d) the date on which the notice was signed by the Director-General.

43 The Register

- (1) The Director-General is to enter and keep in the Register details of the following particulars in respect of 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 section 17 of the Act),
 - (c) the number of the licence or certificate of registration,
 - (d) date of issue and expiry,
 - (e) in the case of a licence issued to a member of a partnership, the name and business address of each licensed member of the partnership,
 - (f) in the case of a corporation licence, the name and business address of each director of the corporation,
 - (g) the cancellation or any current suspension of the licence or certificate of registration,
 - (h) any condition of the licence or certificate of registration under section 20 (a) or (d) or 23 (2) of the Act,
 - (i) the accreditation of the licensee as an auctioneer under section 21 of the Act,
 - (j) action taken under Part 12 (Complaints and disciplinary action) of the Act against the holder of the licence or certificate of registration that resulted in an adverse finding against the person, together with details of any disciplinary action taken against the person as a result of that adverse finding,
 - (k) proceedings for any offence under the Act or this Regulation taken against the holder of the licence or certificate of registration that resulted in a conviction for any such offence, together with details of any penalty 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 respect of the licensee,

- (n) the number of payments made from the Compensation Fund under Part 10 of the Act in respect of any failure to account of the licensee,
 - (o) the suspension of the licence or certificate of registration under section 64A of the *Fair Trading Act 1987*,
 - (p) action in the nature of disciplinary action taken under any 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 any action taken against the person as a result of that adverse finding.
- (2) The Director-General is also to enter and keep in the Register details of any application for a licence or certificate of registration that is refused on the ground that the applicant is not a fit and proper person to hold a licence or a certificate of registration.
- (2A) Details entered in the Register under subclause (2) in respect of a person whose application is so refused are to be removed from the Register on the subsequent grant of a licence or certificate of registration to the person.
- (3) Details entered in the Register under subclause (1) (j) or (k) are to be removed from the Register on the expiration of the period of 10 years after the action or conviction to which they relate.

44 Application of Licensing and Registration (Uniform Procedures) Act 2002

Part 2 of the *Licensing and Registration (Uniform Procedures) Act 2002* applies to and in respect of 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.

45 Penalty notice offences and penalties

- (1) For the purposes of section 216 of the Act:
- (a) each offence created by a provision specified in Column 1 of Schedule 15 is an offence for which a penalty notice may be served, and
 - (b) the penalty prescribed for each such offence is the amount specified opposite the provision in Column 2 of the Schedule or, if the person alleged to have committed

the offence is a corporation and a greater penalty is specified in Column 3 of the Schedule, the amount specified in Column 3 of Schedule 15.

- (2) If the reference to a provision in Column 1 of Schedule 15 is qualified by words that restrict its operation to specified kinds of offences, an offence created by the provision is a prescribed offence only if it is an offence of a kind so specified or committed in the circumstances so specified.

46 Fees and Compensation Fund contributions

- (1) The fees payable for the purposes of the Act are listed in Column 1 of Schedule 16.
- (2) The amount of each fee is to be calculated by adding together the various components set out in Columns 2 and 3 of Schedule 16 in relation to that fee.
- (3) An amount specified in relation to an application fee in Column 3 of Schedule 16 under the heading **Processing component** is taken to be a fee to cover the costs incurred by the Director-General in processing the application.

Note—

This amount is consequently a **processing fee** for the purposes of Part 2 of the [Licensing and Registration \(Uniform Procedures\) Act 2002](#).

- (4) The amount specified in relation to an application fee in Column 4 of Schedule 16 under the heading **Compensation Fund contribution** is prescribed as the amount of the contribution to the Compensation Fund payable by the applicant for the licence concerned.
- (5) The amount specified in relation to an application fee in Column 5 of Schedule 16 under the heading **Total** is the total of the fees payable in respect of the application and the contribution to the Compensation Fund payable by the applicant.
- (6) An applicant for the issue, renewal or restoration of 2 or more licences, or an applicant for the issue 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 issued, renewed or restored to expire at the same time.

47 Exemption for travel agents

A person who is the holder of a travel agent's licence under the [Travel Agents Act 1986](#) is exempt from the requirement under the Act to hold a real estate agent's licence in respect of any activity engaged in by the person when carrying on business as a travel agent in accordance with the authority conferred on that person by the travel agent's licence.

48 Transitional arrangements for auctioneers

The holder of a real estate agent's licence or a stock and station agent's licence who was the holder of a real estate agent's licence or stock and station agent's licence under the

Property, Stock and Business Agents Act 1941 immediately before the commencement of this clause is exempt from the provisions of section 21 (1) of the Act for a period of 6 months after the commencement of this clause or for such longer period as the Minister may direct by order in writing published in the Gazette.

49 Transitional arrangements for reporting by financial institutions

- (1) Clause 38F (Annual certification) of the *Property, Stock and Business Agents (General) Regulation 1993* continues to apply (despite its repeal) in respect of the financial year ending 30 June 2003.
- (2) Section 94 (Annual certification by auditor) of the Act:
 - (a) does not apply in respect of the 12 month period ending on 30 April 2003, and
 - (b) applies in respect of the 12 month period ending on 30 April 2004 as if a reference in that section to that 12 month period were a reference to a period of 10 months ending on that date (and commencing on 1 July 2003).

Schedule 1 General rules of conduct applying to all licensees and registered persons

(Clause 11)

Note—

Clause 11 provides that a reference in this Schedule to an agent includes a reference to a registered person to whom the Schedule applies.

1 Knowledge of Act and regulations

An agent must have a knowledge and understanding of the Act and the regulations under the Act, and such other laws relevant to the category of licence or certificate of registration held (including, laws relating to residential tenancy, fair trading, trade practices, anti-discrimination and privacy) as may be necessary to enable the agent to exercise his or her functions as agent lawfully.

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 any parties 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 interest at all times unless it would be contrary to the Act or regulations under the Act or otherwise unlawful to do so.

7 Confidentiality

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

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

8 To act in accordance with client authority

An agent must not act as an agent or represent himself or herself as acting as an agent on behalf of a person without written authority.

9 To act in accordance with client's instructions

An agent must act in accordance with a client's instructions unless it would be contrary to the Act or regulations under the Act or otherwise unlawful to do so.

10 Licensee must ensure employees comply with the Act and regulations

An agent who is the licensee-in-charge at a place of business of a licensee must take reasonable steps to ensure other licensees or registered persons employed in the business conducted there 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 the client's interests.

12 Referral to service provider

- (1) An agent who refers a principal or prospect to a service provider must not falsely represent to the principal or prospect that the service provider is independent of the agent.
- (2) A service provider is considered to be "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 principal or prospect:

(a) the nature of any relationship, whether personal or commercial, the agent has with the service provider, and

(b) the nature and value of any rebate, discount, commission or benefit 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 principal or prospect engage the services of a solicitor or licensed conveyancer, or firm of solicitors or licensed conveyancers, if the agent knows that the solicitor or licensed conveyancer, or the firm of solicitors or licensed conveyancers, acts or will be acting for the other party to the agreement concerned.

(2) Subclause (1) does not prevent an agent recommending that a principal or prospect engage the services of a solicitor or licensed conveyancer if no other solicitor or licensed conveyancer is available (for example, in a remote location).

(3) If no other solicitor or licensed conveyancer is available, the agent must, in recommending their engagement, advise the principal or prospect that the solicitor or licensed conveyancer is or will be acting for the other party.

14 Inducements

An agent must not offer to provide to any other person any gift, favour or benefit, whether monetary or otherwise, in order to induce a third person to engage the services of the agent as agent in respect of any matter.

15 Soliciting through false or misleading advertisements or communications

An agent must not solicit clients or customers through advertisements or other communications that the agent knows or should know are false or misleading.

16 Insertion of material particulars in documents

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

17 Duty to provide copy of signed documents

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

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

19 Agency agreements must comply with regulations

An agent must not enter into an agency agreement unless the agreement complies with any applicable requirements of this Regulation, as required by section 55 of the Act.

Schedule 2 Rules specific to real estate agents, real estate salespersons and on-site residential property managers

(Clause 11)

Note—

Clause 11 provides that a reference in this Schedule to an agent includes a reference to a registered person to whom the Schedule applies.

Part 1 Sales

1 Preliminary physical inspection of property for sale to be conducted by agent

An agent must not act on behalf of a principal in respect of the sale of a property unless the agent has conducted a preliminary physical inspection of the property.

2 Sales inspection report required for property

On completion of the inspection required by clause 1, an agent must prepare and give to the principal a sales inspection report for the property. The report must specify the following and be signed by the agent:

- (a) the principal's name and address,
- (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 the address of the property and such other details as may be necessary to enable the property to be readily identified,
- (e) a description of any fittings and fixtures that are to be included in the sale of the property,
- (f) any terms and conditions of sale known to the agent (for example, whether or not vacant possession is to be given),
- (g) the agent's recommendation as to the most suitable method of sale of the property,
- (h) the agent's estimate of the selling price (or price range) for the property,
- (i) details of any covenants, easements, defects, local government notices or orders affecting the property that are known to the agent,
- (j) details of any special instructions about the marketing and showing of the property,
- (k) the name, business address, telephone number and address for service of documents of the principal's solicitor.

3 Principal to be informed of an offer

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

4 Setting aside minimum or reserve price at auction

When the bidding at an auction does not reach the minimum or reserve price fixed for the property by the principal, the licensee conducting the auction must not set aside that price without the express permission of the principal or a person authorised to give that permission by the principal.

5 Information to be given when expression of interest deposit paid

- (1) When an agent issues a receipt for an expression of interest deposit made prior to exchange of contracts, the agent must inform the person who paid the deposit that the principal has no obligation to sell the property or the purchaser to buy the property and the deposit is refundable if a contract for the sale of the property is not entered into. The information must be provided in writing and may be provided on the receipt.
- (2) The agent must promptly inform the principal when an expression of interest deposit has been paid.
- (3) The agent must promptly inform the person who paid the deposit when the agent becomes aware of any subsequent offer to purchase the property received from any other person. The agent must also advise the person who paid the deposit that they have the right to make further offers up until exchange of contracts has taken place.

6 Notifying managing agent of appointment to sell residential property

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

7 Licensee must not accept payment for a referral

An agent must not demand or accept a fee or other valuable consideration for referring the principal to a buyers agent.

8 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:

- (a) the written authority on the basis of which the agent bids on behalf of the person contains an acknowledgement that the person has been given a copy of the conditions that are applicable in respect of the sale, and
- (b) the agent is satisfied that the person has been given a copy of those conditions.

9 Agent participating in exchange of contracts for residential property

If an agent participates in the exchange or making of a contract for the sale of residential

property, 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, or
- (b) the solicitor or conveyancer acting for a party to the contract if the party has notified the agent, or it is apparent from the contract, that a solicitor or conveyancer is acting for the party.

Part 2 Property management

Note—

These rules apply to real estate agents, registered persons they employ and on-site residential property managers.

10 Inspection report

An agent must, as soon as practicable after entering into an agency agreement in respect of the management of property, prepare and give to the principal an inspection report for the property. The inspection report must include the following and be signed by the agent:

- (a) the name and address of the principal,
- (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 any work still to be completed by the principal on the property.

11 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) Subclauses (1) and (2) do not apply if the principal, and, if the property is currently let, the tenant, have authorised otherwise in writing.

12 Use of collection agent to collect rent

- (1) A licensee must not use the services of a collection agent to collect rent on behalf of a principal unless the arrangements for the collection and holding of that rent pending its payment to the agent or the principal comply with such guidelines as the Director-General may issue from time to time under this clause (including guidelines requiring

rent collected by a collection agent to be paid into and retained in a trust account).

(2) In this clause:

collection agent means a person who collects rent as agent for and on behalf of a licensee.

13 Maintenance or repairs of rental property

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

14 Breach of tenancy agreement

An agent managing a rental property must immediately notify the principal in writing if the agent becomes aware of a tenant's breach of the tenancy agreement.

15 Notifying tenant of appointment to sell

- (1) This clause applies if an agent managing a rental property is aware that:
 - (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 (together with the name and contact details of the agent).

16 Final inspection of property

An agent must take all reasonable steps to ensure that any final inspection of the property, on vacation of the property, is conducted in the presence of the tenant (unless otherwise authorised by the tenant).

Note—

"Reasonable steps" by an agent would comprise contacting the tenant to discuss suitable times for the inspection, arranging to meet at a particular time and place and proceeding to meet the tenant at the arranged time and place.

17 Obtaining tenant's signature for rental bond refund

An agent must not solicit or obtain the signature of a tenant to any document relating to

the refund of a rental bond prior to the termination of the tenancy, unless the document directs the bond to be repaid in full to the tenant or transferred to another tenancy in accordance with the tenant's directions.

Schedule 3 Rules specific to stock and station agents and registered persons they employ

(Clause 11)

Note—

Clause 11 provides that a reference in this Schedule to an agent includes a reference to a registered person to whom the Schedule applies.

Part 1 Sales

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

An agent must not act on behalf of a principal in respect of the sale of any property, including livestock included in the sale, unless the agent has conducted a preliminary physical inspection of the property. This clause does not apply to a sale solely of livestock.

2 Sales inspection report required for the property

On completion of the inspection required by clause 1, an agent must prepare and give to the principal a sales inspection report for the property. The report must specify the following and be signed by the agent:

- (a) the principal's name and address,
- (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 the address of the property and such other details as may be necessary to enable the property to be readily identified, and the size of the property in hectares,
- (e) a description of the services provided to the property (for example, power, phone, airstrip, closest schools, mail service, closest rail service),
- (f) information about the type of country (topography, soils, timber, arable area, pasture development), water (irrigation, dams, rainfall) and production capacity,
- (g) a description of any fittings and fixtures that are to be included in the sale of the property,
- (h) a description of items included in the sale such as house, other accommodation, grain storage, woolshed, sheep/cattle yards or plant equipment,

- (i) a description of other items to be included in the sale, such as livestock,
- (j) any terms and conditions of sale known to the agent (for example, 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 any covenants, easements, defects, local government notices or orders affecting the property that are known to the agent,
- (n) details of any special instructions about the marketing and showing of the property,
- (o) the name, business address, telephone number and address for service of documents of the principal's solicitor.

3 Principal to be informed of an offer

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

4 Information to be given when expression of interest deposit paid

- (1) When an agent issues a receipt for an expression of interest deposit made prior to exchange of contracts, the agent must inform the person who paid the deposit that the principal has no obligation to sell the property or the purchaser to buy the property and the deposit is refundable if a contract for the sale of the property is not entered into. The information must be provided in writing and may be provided on the receipt.
- (2) The agent must promptly inform the principal when an expression of interest deposit has been paid.
- (3) The agent must promptly inform the person who paid the deposit when the agent becomes aware of any subsequent offers to purchase the property received from any other person. The agent must also advise the person who paid the deposit that they have the right to make further offers up until exchange of contracts has taken place.

5 Agent must not accept payment for a referral

An agent must not demand or accept a fee or other valuable consideration for referring the principal to a buyers 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:

- (a) the written authority on the basis of which the agent bids on behalf of the person contains an acknowledgement that the person has been given a copy of the conditions that are applicable in respect of the sale, and
- (b) the agent is satisfied that the person has been given a copy of those conditions.

7 Setting aside minimum or reserve price at auction

When the bidding at an auction does not reach the minimum or reserve price fixed for the property by the principal, the licensee conducting the auction must not set aside that price without the express permission of the principal or a person authorised to give that permission by the principal.

Part 2 Property management

8 Inspection report

An agent must, as soon as practicable after entering into an agency agreement in respect of the management of property, prepare and give to the principal an inspection report for the property. The inspection report must include the following and be signed by the agent:

- (a) the name and address of the principal,
- (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 any work still to be completed by the principal on the property.

9 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) Subclauses (1) and (2) do not apply if the principal, and, if the property is currently let, the tenant, have authorised otherwise in writing.

10 Use of collection agent to collect rent

- (1) A licensee must not use the services of a collection agent to collect rent on behalf of a principal unless the arrangements for the collection and holding of that rent pending its payment to the agent or the principal comply with such guidelines as the Director-General may issue from time to time under this clause (including guidelines requiring rent collected by a collection agent to be paid into and retained in a trust account).

- (2) In this clause:

collection agent means a person who collects rent as agent for and on behalf of a licensee.

11 Maintenance or repairs of rental property

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

12 Breach of tenancy agreement

An agent managing a rental property must immediately notify the principal in writing if the agent becomes aware of a tenant's breach of the tenancy agreement.

13 Notifying tenant of appointment to sell

- (1) This clause applies if an agent managing a rental property is aware that:
- (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 (together with the name and contact details of the agent).

14 Final inspection of property

An agent must take all reasonable steps to ensure that any final inspection of the property, on vacation of the property, is conducted in the presence of the tenant (unless

otherwise authorised by the tenant).

Note—

“Reasonable steps” by an agent would comprise contacting the tenant to discuss suitable times for the inspection, arranging to meet at a particular time and place and proceeding to meet them at the arranged time and place.

Schedule 4 Rules specific to business agents and registered persons they employ

(Clause 11)

Note—

Clause 11 provides that a reference in this Schedule to an agent includes a reference to a registered person to whom the Schedule applies.

1 Preliminary physical inspection of the business to be conducted by agent

An agent must not act on behalf of a principal in respect of the sale of a business unless the agent has conducted a preliminary physical inspection of the business or has the principal’s written instructions that such an inspection is not required by the principal.

2 Sales inspection report required for business

On completion of the inspection required by clause 1, an agent must prepare and give to the principal a sales inspection report for the business. The report must specify the following and be signed by the agent:

- (a) the principal’s name and address,
- (b) the date of preparation of the report,
- (c) the agent’s name, business address and telephone number,
- (d) a description of the business, including the address of the business and such other details as may be necessary to enable the business to be readily identified, the business name and its ABN,
- (e) a description of inclusions to be included in the sale such as goodwill, plant, fittings and stock in inventory, together with details of any encumbrances affecting those inclusions,
- (f) any terms and conditions of sale known to the agent,
- (g) the agent’s recommendation as to the most suitable method of sale of the business,
- (h) the agent’s estimate of the selling price (or price range) for the business,
- (i) details of any defects, local government notices or orders affecting the business that are known to the agent.

3 Confirmation of specific instructions

- (1) Before or at the time of entering into an agency agreement under which the agent will act for the seller on the sale of a business, the agent must prepare for inclusion in the agency agreement written confirmation of any specific instructions given to the agent by the principal before the agreement is entered into about any of the following:
 - (a) arrangements for the transfer to the purchaser of any liability for the leasing or hire purchase of goodwill, plant, fittings or stock in inventory included in the sale,
 - (b) the marketing of the business,
 - (c) the entitlement of prospective purchasers to inspect the premises of the business and the circumstances under which such an inspection can be made,
 - (d) 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.

4 Principal to be informed of an offer

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

5 Information to be given when expression of interest deposit paid

- (1) When an agent issues a receipt for an expression of interest deposit made prior to exchange of contracts, the agent must inform the person who paid the deposit that the principal has no obligation to sell the business or the purchaser to buy the business and the deposit is refundable if a contract for the sale of the business is not entered into. The information must be provided in writing and may be provided on the receipt.
- (2) The agent must promptly inform the principal when an expression of interest deposit has been paid.

- (3) The agent must promptly inform the person who paid the deposit when the agent becomes aware of any subsequent offers to purchase the business received from any other person. The agent must also advise the person who paid the deposit that they have the right to make further offers up until exchange of contracts has taken place.

6 Agent must not accept payment for a referral

An agent must not demand or accept a fee or other valuable consideration for referring the principal to a buyers agent.

Schedule 5 Rules specific to buyers agents

(Clause 11)

Note—

Clause 11 provides that a reference in this Schedule to an agent includes a reference to a registered person to whom the Schedule applies.

1 Statement of property details

At the time of entering into an agency agreement with a principal to act as buyer's agent for the principal, an agent must prepare and give the principal 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.

2 Principal to be informed of negotiations

The agent must keep the principal informed of each stage of the negotiation of a purchase price, as instructed by the principal. This clause does not apply to bids made in the course of an auction.

3 Licensee to obtain best possible purchase price

An agent is to use his or her 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.

4 Licensee not to exceed agreed purchase price in negotiations or at auction

- (1) In negotiations for the purchase of a property, the agent must not exceed the maximum or agreed price fixed by the principal without the express written authorisation of the principal or a person authorised by the principal.

- (2) When the bidding at an auction exceeds the maximum or agreed price fixed by the principal, the agent must not continue bidding without the express authorisation of the principal or a person authorised by the principal.

5 Information to be given when expression of interest deposit paid

- (1) When the principal pays an expression of interest deposit in respect of the proposed purchase of a property prior to exchange of contracts, the agent must inform the principal that the vendor has no obligation to sell the property or the purchaser to buy the property and the deposit is refundable if a contract for the sale of the property is not entered into. The information must be provided in writing and may be provided on the receipt issued by the vendor or their agent.
- (2) An agent must promptly inform the principal when the agent becomes aware of any subsequent offers to purchase the property.

6 Licensee must not accept payment for a referral

An agent must not demand or accept a fee or other valuable consideration for referring the principal to a selling agent.

Schedule 6 Rules specific to strata, community, residential and other property managers

(Clause 11)

Note—

Clause 11 provides that a reference in this Schedule to an agent includes a reference to a registered person to whom the Schedule applies.

1 Co-operation about records, access and transfer

If an agent is acting on behalf of a principal 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 that principal in the management of that property, the agent must co-operate with the new agent in regards to access to the records of the principal, including but not limited to making the records reasonably available (according to law), and facilitating the transfer of management functions between the agent and the new agent.

2 Disclosure of potential agency

If an agent intends to act (or offers to act) for a principal in the management of property and is aware that another agent is or other agents are managing that property for the principal, the agent must, unless the principal otherwise directs in writing, disclose their intention to act or offer to act to the current agent or agents.

3 Use of collection agent to collect rent

(1) A licensee must not use the services of a collection agent to collect rent or levies on behalf of a principal unless the arrangements for the collection and holding of the rent or levies pending payment to the agent or the principal comply with such guidelines as the Director-General may issue from time to time under this clause (including guidelines requiring rent or levies collected by a collection agent to be paid into and retained in a trust account).

(2) In this clause:

collection agent means a person who collects rent or levies as agent for and on behalf of a licensee.

4 Confirmation of specific instructions—property management services

(1) Before or at the time of entering into an agency agreement under which the 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 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 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 limitations on expenditure that may be incurred by the agent without obtaining the principal's approval,
- (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 tenancy agreement or to terminate the tenancy agreement,
- (i) undertaking the necessary steps to obtain vacant possession and recover any money owing to the principal in relation to the tenancy of the property,
- (j) representing the principal 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, 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.

(2) (Repealed)

5 Confirmation of specific instructions—leasing of property

- (1) Before or at the time of entering into an agency agreement under which the agent will act for the owner of residential property or rural land in relation to the entering into 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 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 tenancy agreement,
 - (c) undertaking an initial inspection of the property,
 - (d) collecting initial rent payment,
 - (e) receiving and disbursing rental bond money,
 - (f) advertising the property for letting.

(2) (Repealed)

6 Confirmation of specific instructions—strata managing agent or community managing agent

- (1) Before or at the time of entering into an agency agreement under which the agent will exercise the functions of a strata managing agent or community managing agent, 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 exercise of those functions and any limitations on the agent's authority to undertake those duties:
 - (a) undertaking the financial management of funds and books of account,
 - (b) holding documents and maintaining records relating to the scheme (for example,

the strata roll, notices, and minutes of meetings),

- (c) arranging building inspections and reports,
- (d) effecting repairs to and maintaining common property or engaging appropriately qualified tradespersons to do so and limitations on expenditure that may be incurred by the agent without obtaining the principal's approval,
- (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 sinking fund and the administrative fund,
- (i) undertaking steps necessary to recover any 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 (for example, accounts for water charges, council rates and maintenance),
- (l) arranging and undertaking administrative duties in relation to annual general meetings and other general meetings.

(2) (Repealed)

Schedule 7 Terms applying to all agency agreements

(Clause 13)

1 Identification of property, business or professional practice

The agreement must specify the address of the property, business or professional practice to which the agreement applies or must contain such other description of the property, business or professional practice as clearly identifies it. This clause does not apply to an agency agreement to act for the buyer of land.

2 Names of parties to agreement

The agreement must specify the names of each of the parties to the agreement (including the licensee).

3 Information identifying parties

The agreement must specify the principal's address, the licensee's licence number and any business name under which the licensee conducts business.

4 Principal's authority to enter into agreement

The agreement must contain a statement to the effect that the principal warrants that the principal has authority to enter into the agreement.

5 Authorisation for licensee to act on behalf of principal

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

6 Period of duration of the agreement

The agreement must contain a term indicating the period for which the agreement remains in force or indicating that the agreement remains in force until terminated.

7 Termination of the agreement

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

8 Reimbursement of licensee

(1) If the licensee is to be entitled to any 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 that the licensee is so entitled,
- (b) describes those services,
- (c) specifies the amount that the licensee is so entitled to and when it is payable,
- (d) states that those services and amounts cannot be varied except with the agreement in writing of the principal.

(2) Subclause (1) (d) does not apply to an agency agreement for the exercise of the functions of a strata managing agent or community managing agent.

9 Remuneration

(1) The agreement must include a term specifying:

- (a) the circumstances in which the licensee is entitled to remuneration (by way of commission or otherwise) for services performed under the 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 agreement relates to the sale or purchase of residential property and provides

for payment of commission to the agent calculated as a percentage of the sale or purchase price, the term must also specify the amount of the remuneration to which the licensee will be entitled calculated on the basis of a specified estimated sale or purchase price for the property.

Schedule 8 Terms specific to agency agreement for sale of residential property

(Clause 13)

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 another agent (or you) sell the property or introduce 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 another agent sells the property or 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 whether or not the agent is the effective cause of the happening of the event and 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 that an agency agreement is required to include by this clause must be included in the agreement immediately following the term required by clause 9 (Remuneration) of Schedule 7 and 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 you may have to pay 2 commissions (if this agreement or the other agreement you have signed is a sole or exclusive agency agreement).

- (2) A statement that an agency agreement is required to include by this clause must be included in the agreement immediately following the term required by clause 9 (Remuneration) of Schedule 7 or immediately following the statement required by clause 1 of this Schedule, and must be no less prominent than that term or statement.

3 Fixed term agency agreements

- (1) If the agreement is for a fixed term that exceeds 90 days, the agreement must include a term that entitles the principal to terminate the agreement (without penalty) by giving 30 days notice in writing to the agent at any time after the end of the first 90 days of the term.
- (2) This clause does not apply to an agency agreement in respect of the sale of residential property where the contract for sale provides for the construction by the seller of a dwelling on the land.

4 Price at which property is to be offered

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

5 Providing principal with consumer guide

The agreement must include a provision that states whether or not the agent provided the principal with a copy of the approved guide entitled "Agency Agreements for the Sale of Residential Property" (being the approved guide mentioned in section 56 of the Act) before the agreement was entered into and (if the guide was provided) specifies the date it was provided.

6 Cooling-off period

- (1) The agency agreement must include the following statement:
- COOLING-OFF PERIOD: You (the principal) have a cooling-off period for this agreement. If you do not wish to continue with this agreement you can cancel it until 5 pm on the next business day or Saturday.
- (2) A statement that this clause requires an agency agreement to include must be included in the agreement in close proximity to the place where the principal signs the agreement and must be no less prominent than any other term of the agreement.

7 A sales inspection report to form part of the agreement

The agreement must include a copy of any sales inspection report prepared by the agent and given to the principal under clause 2 of Schedule 2.

Schedule 9 Terms specific to a buyers agent agency agreement

(Clause 13)

1 Property details

The agreement must include a copy of the statement prepared and given to the principal by the agent for the purposes of clause 1 (Statement of property details) of Schedule 5.

2 Purchase price range

The agreement must specify a price or price range as the maximum price or the price range that the principal is prepared to pay for a property.

Schedule 10 Terms specific to agency agreement for sale of rural land

(Clause 13)

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 another agent (or you) sell the property or introduce 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 another agent sells the property or 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 whether or not the agent is the effective cause of the happening of the event and 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 that an agency agreement is required to include by this clause must be included in the agreement immediately following the term required by clause 9 (Remuneration) of Schedule 7 and 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 you may have to pay 2 commissions (if this agreement or the other agreement you have signed is a sole or exclusive agency agreement).

- (2) A statement that an agency agreement is required to include by this clause must be included in the agreement immediately following the term required by clause 9 (Remuneration) of Schedule 7 or immediately following the statement required by clause 1 of this Schedule, and must be no less prominent than that term or statement.

3 Price at which property is to be offered

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

4 Cooling-off period

- (1) The agency agreement must include the following statement:

COOLING-OFF PERIOD: You (the principal) have a cooling-off period for this agreement. If you do not wish to continue with this agreement you can cancel it until 5 pm on the next business day or Saturday.

- (2) A statement that this clause requires an agency agreement to include must be included in the agreement in close proximity to the place where the principal signs the agreement and must be no less prominent than any other term of the agreement.

5 A sales inspection report to form part of the agreement

The agreement must include a copy of any sales inspection report prepared by the agent and given to the principal under clause 2 of Schedule 3.

Schedule 11 Terms specific to agency agreement for sale of business

(Clause 13)

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 another agent (or you) sell the business or introduce 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 another agent sells the business or 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 whether or not the agent is the effective cause of the happening of the event and 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 that an agency agreement is required to include by this clause must be included in the agreement immediately following the term required by clause 9 (Remuneration) of Schedule 7 and 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 you may have to pay 2 commissions (if this agreement or the other agreement you have signed is a sole or exclusive agency agreement).

- (2) A statement that an agency agreement is required to include by this clause must be included in the agreement immediately following the term required by clause 9 (Remuneration) of Schedule 7 or immediately following the statement required by clause 1 of this Schedule, and must be no less prominent than that term or statement.

3 Transfer of liability for the leasing or hire purchase of inclusions

The agreement must include any written confirmation prepared for the purposes of clause 3 of Schedule 4 of any specific instructions given to the agent by the principal before the agreement is entered into about arrangements for the transfer to the purchaser of any liability for the leasing or hire purchase of goodwill, plant, fittings or stock in inventory included in the sale.

4 Specific instructions about marketing and inspections

The agreement must include any written confirmation prepared for the purposes of clause 3 of Schedule 4 of any specific instructions given to the agent by the principal before the agreement is entered into about any of the following:

- (a) the marketing of the business,
- (b) the entitlement of prospective purchasers to inspect the premises of the business and

the circumstances under which such an inspection can be made,

- (c) 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.

5 Sales inspection report to form part of the agreement

The agreement must include a copy of any sales inspection report prepared by the agent and given to the principal under clause 2 of Schedule 4.

Schedule 12 Terms specific to agency agreement for management of residential property or rural land

(Clause 13)

1 Extent of agent's authority

The agreement must include any written confirmation prepared for the purposes of clause 4 of Schedule 6 of the extent of the agent's authority to undertake the following duties in connection with the management of the property 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 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 limitations on expenditure that may be incurred by the agent without obtaining the principal's approval,
- (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 tenancy agreement or to terminate the tenancy agreement,
- (i) undertaking the necessary steps to obtain vacant possession and recover any money owing to the principal in relation to the tenancy of the property,
- (j) representing the principal 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, 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.

2 Accounting to the principal in respect of money received

The agreement must specify the manner in which and the frequency with which the agent is required to account to the principal in respect of money received by the agent on behalf of the principal.

Schedule 13 Terms specific to agency agreement for the leasing of residential property or rural land

(Clause 13)

1 Extent of agent's authority

The agreement must include any written confirmation prepared for the purposes of clause 5 of Schedule 6 of the extent of the agent's authority to undertake the following duties in relation to the entering into of the lease 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 tenancy agreement,
- (c) undertaking an initial inspection of the property,
- (d) collecting initial rent payment,
- (e) receiving and disbursing rental bond money,
- (f) advertising the property for letting.

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

The agreement must specify the period of the tenancy, the amount of the rent to be paid, the rent payment period and the amount of the bond to be paid.

Schedule 14 Terms specific to agency agreement for the management

of strata or community title land

(Clause 13)

1 Authorisation for the licensee to undertake certain duties relating to management of strata or community title land

The agreement must include any written confirmation prepared for the purposes of clause 6 of Schedule 6 of the extent of the agent's authority to undertake the following duties in connection with the exercise of the functions of a strata managing agent or community managing agent and any limitations on the agent's authority to undertake those duties:

- (a) undertaking the financial management of funds and books of account,
- (b) holding documents and maintaining records relating to the scheme (for example, the strata roll, notices, and minutes of meetings),
- (c) arranging building inspections and reports,
- (d) effecting repairs to and maintaining common property or engaging appropriately qualified tradespersons to do so and limitations on expenditure that may be incurred by the agent without obtaining the principal's approval,
- (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 sinking fund and the administrative fund,
- (i) undertaking steps necessary to recover any 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 (for example, accounts for water charges, council rates and maintenance),
- (l) arranging and undertaking administrative duties in relation to annual general meeting and any other general meetings.

2 Effect of statutory appointment of managing agent

The agreement must include a term or terms to the effect of the following provisions:

- (a) The agent does not have and may not exercise any of 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 section

162 of the *Strata Schemes Management Act 1996* or section 85 of the *Community Land Management Act 1989*.

- (b) The agency agreement is terminated on the appointment of a strata managing agent or managing agent under section 162 of the *Strata Schemes Management Act 1996* or section 85 of the *Community Land Management Act 1989* to exercise or perform all the functions of the owners corporation, association or strata corporation.
- (c) The agent is not entitled to any remuneration by way of commission or otherwise in respect of any period after termination of the agency agreement as referred to in paragraph (b).
- (d) The agent is not entitled to any payment (in the nature of a penalty or otherwise) by reason of the early termination of the agency agreement as referred to in paragraph (b).

3 Renewal of agreement for fixed term

If the agreement is for a fixed term, it must not contain a provision that operates (without the further agreement in writing of the principal) to renew the agreement for a subsequent fixed term of more than 3 months unless the agreement also provides for the principal to be able to terminate the agreement (without penalty) by giving 3 months' notice of termination at any time during that subsequent fixed term.

Note—

This does not prevent the principal from agreeing in writing to the renewal of the agreement for a further fixed term.

4 Accounting to the principal in respect of money received

The agreement must specify the manner in which and the frequency with which the agent is required to account to the principal in respect of money received by the agent on behalf of the principal.

Schedule 15 Penalty notice offences

(Clause 45)

Column 1 Provision	Column 2 Penalty (individuals)	Column 3 Penalty (corporations)
Offences under the Act		
section 8 (1)	\$1,100	
section 9 (1)	\$1,100	\$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	\$2,200
section 31 (2)	\$1,100	\$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 39 (1)	\$550	
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 51 (1)	\$2,200	
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 66 (2)	\$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 72	\$2,200	
section 73 (1)	\$2,200	
section 74 (2)	\$2,200	
section 78 (1)	\$1,100	\$2,200
section 78 (2)	\$1,100	\$2,200
section 78 (3)	\$550	
section 79 (1)	\$550	\$1,100
section 79 (2)	\$550	\$1,100
section 80	\$550	
section 81 (1)	\$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 98 (7)	\$550	
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) (a)	\$550	\$1,100
section 111 (1) (b)	\$550	\$1,100
section 111 (3)	\$550	\$1,100
section 111 (4)	\$550	\$1,100
section 113	\$1,100	
section 119 (1)	\$5,500	
section 119 (3)	\$1,100	

section 120	\$1,100	
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	

Offences under this Regulation

Each provision of this Regulation that creates an offence	\$550	\$1,100
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Schedule 16 Fees and Compensation Fund contributions

(Clause 46)

Column 1	Column 2	Column 3	Column 4	Column 5
Nature of fee payable	Fixed component	Processing component	Compensation Fund contribution	Total
Application fee for grant of licence	\$167	\$150	\$53	\$370

Application fee for grant of certificate of registration	\$33	\$60		\$93
Application fee for renewal of licence	\$167	\$50	\$53	\$270
Application fee for renewal of certificate of registration	\$33	\$30		\$63
Application fee for restoration of licence	\$230	\$50	\$53	\$333
Application fee for restoration of certificate of registration	\$53	\$30		\$83
Application fee for accreditation as an auctioneer under section 21 of the Act		\$50		\$50
Application fee for a replacement licence		\$32		\$32
Application fee for a replacement certificate of registration		\$32		\$32