

CPD COURSE

Continuing Professional Development Compulsory Learning Area 2020

This learning resource covers all 3 of the determined compulsory learning areas as set down by the Office of Fair Trading for the 2020 year being the 23/3/2020 – 22/3/2021.

CPD Topic 1: 2020 Real Estate Reforms (including trust account requirements) (1 hour)

CPD Topic 2: Rules of Conduct (1 hour) and

CPD Topic 3: Risk Management (Responsibilities of Agents)

Total learning hours 3 (plus assessment time)



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CONTENTS

CONTENTS	2
CPD TOPIC 1 – 2020 REAL ESTATE REFORMS &	6
CPD TOPIC 2 – RULES OF CONDUCT	6
WHAT YOU WILL LEARN	6
BACKGROUND TO PROPERTY SERVICES INDUSTRY REFORMS	6
REFORM POSITION PAPER PUBLISHED NOVEMBER 2016	6
MAJOR REFORMS TO PROPERTY INDUSTRY ENACTED IN 2018	7
SUPERVISION GUIDELINES	7
COMMENCEMENT TOOK PLACE 23 RD MARCH 2020	7
ENHANCED DISCIPLINARY POWERS ²	7
LICENSING FRAMEWORK AND THE QUALIFICATIONS ORDER	8
STREAMLINING THE LICENSING SYSTEM	8
QUALIFICATION REQUIREMENTS FOR A LICENCE AND CERTIFICATE OF REGISTRATION	9
ASSISTANT AGENT PATHWAYS – NEW ENTRANTS AND EXISTING AGENTS	10
A. NEW ENTRANTS TO THE INDUSTRY	10
B. CURRENTLY REGISTERED SALESPERSONS AND REGISTERED STRATA MANAGERS	11
C. CERTIFICATE OF REGISTRATION VALID FOR A MAXIMUM TOTAL OF FOUR YEARS	12
CLASS 2 AGENT PATHWAYS	12
A. NEW ENTRANTS – ASSISTANT AGENTS PROGRESSING TO A CLASS 2 LICENCE UNDER THE AMENDED ACT	13
B. PREVIOUSLY LICENSED AGENTS	13
C. DUAL LICENCE AS A REAL ESTATE AGENT AND STOCK AND STATION AGENT	14
CLASS 1 AGENT PATHWAYS	15
A. NEW ENTRANTS – CLASS 2 AGENTS PROGRESSING TO CLASS 1 UNDER THE NEW ACT	16
B. CURRENTLY NOMINATED LICENSEES IN CHARGE	16
OVERVIEW OF THE AMENDMENT REGULATION AND NEW RULES OF CONDUCT	17
PART 1 PRELIMINARY	17
Name of Regulation (clause 1)	17
PART 2 CONDUCT OF AGENCY BUSINESS	17



Functions of agents and assistant agents (new – clause 4A – 4C)	17
PART 6 EXEMPTIONS	18
Exemption for on-site residential property managers (new – clause 46B)	18
Exemption from qualification requirements for certain agents (new – clause 46C)	18
PART 7 GENERAL	19
Disclosure of kinds of material facts (new – clause 54)	19
SCHEDULE 1 GENERAL RULES OF CONDUCT APPLYING TO ALL LICENSEES AND REGISTERED PERSONS	20
Fees and charges (new – clause 20)	20
Agent to pay rental income monthly to landlord (new – clause 21)	20
Agent to establish separate trust accounts for rental and sales money (new) ..	20
Limits on value of certain gifts or benefits (new – clause 22)	21
SCHEDULE 2 RULES SPECIFIC TO REAL ESTATE AGENTS AND ASSISTANT REAL ESTATE AGENTS ART	21
Agent to obtain quotes for maintenance and repairs (clause 13)	21
SCHEDULE 3 RULES SPECIFIC TO STOCK AND STATION AGENTS AND ASSISTANT STOCK AND STATION AGENTS	21
Theft of livestock (new – clause 7A)	21
Agent to obtain quotes for repairs and maintenance (clause 11)	22
CONTINUING PROFESSIONAL DEVELOPMENT	23
PREVIOUS APPROACH TO CPD	23
NEW CPD FRAMEWORK	23
COMPULSORY AND ELECTIVE TOPICS	24
Certificate of Registration-Assistant Agents	26
Class 2 licence	26
Class 1 licence	26
FOUR YEAR DEVELOPMENT PATHWAY FOR ASSISTANT AGENTS	27
APPROVED CPD TRAINING PROVIDERS	28
RECORD KEEPING REQUIREMENTS	28
CPD TOPIC 3 – RISK MANAGEMENT	29
WHAT YOU WILL LEARN	29
AGENCY RISK – AN INTRODUCTION	29
DEFINITION OF RISK	30



SOURCES OF RISK IN REAL ESTATE	31
SOURCES OF INFORMATION ON RISK	33
STAKEHOLDERS WHO ARE THEY?	34
ANALYSING RISKS	34
IMPACTS OF RISKS	42
CLASSIFICATION OF RISKS ³⁵	42
IMPLEMENT POLICIES AND PROCEDURES TO MINIMISE RISK	45
OPTIONS FOR MINIMISING RISK ³⁶	45
POLICIES, PROCEDURES AND SYSTEMS TO MINIMISE RISK	46
KNOW THE ACT	46
INSURANCE	48
Types of Insurance ^{37 & 38}	48
Premiums and Claims and Problems of Under Insurance	49
ONGOING MONITORING & REPORTING SYSTEMS	49
REASONS FOR MONITORING THE RISK ENVIRONMENT	49
HOW TO MONITOR THE RISK ENVIRONMENT ³⁹	49
REPORTING BREACHES IN THE RISK ENVIRONMENT	50
ASSESS RISKS/ THREATS TO LIKE ORGANISATIONS	50
RECORDING AND ANALYSING RISK INFORMATION	50
REMEDYING POTENTIAL RISKS	50
RISK MANAGEMENT ISSUES IN REAL ESTATE	51
GENERAL	51
SUPERVISION	52
RESPONSIBILITIES OF ALL LICENSED / CERTIFICATE STAFF	53
CONFLICTS OF INTEREST (Property & Stock Agents Regulations 2014 Schedule 1 General Rules of Conduct Clause No 11)	53
REFERRALS ⁴² (Section 47 of PSA Act 2002)	53
BENEFICIAL INTERESTS ⁴² (Section 49 of PSA Act 2002)	54
FINANCIAL ADVICE ⁴² (Section 46)	54
AGENCY AGREEMENTS ⁴² (Section 55)	54
REBATES, DISCOUNTS & COMMISSIONS (SECTION 57)	57
DISCLOSURES IN ADVERTISEMENTS (SECTION 50)	57
TRUE ESTIMATE OF SELLING PRICE (SECTION 72 & 73)	58
Estimated Selling Price Guidelines for Agents.....	58



What if the eventual sale price is substantially different from the estimated price?	59
The requirement to substantiate selling price estimates – residential property ..	59
What does the Office of Fair Trading require of agents?	60
CONTRACTS FOR SALE (SECTION 63)	64
SO WHAT IS A COMPLETE CONTRACT?	64
EXCHANGING CONTRACTS (SECTION 64)	66
AUCTIONS	67
PROPERTY MANAGEMENT SPECIFIC ISSUES	68
ARREARS	68
REPAIRS AND MAINTENANCE	68
Repairs and maintenance – Procedures	69
“Urgent” or Emergency Repairs	70
Monitoring Repairs	72
Repairs the Responsibility of Owners Corporations	72
Insuring your landlords' risk:	73
THEFT AND FRAUD	75
IDENTITY THEFT ⁵⁴	76
TENANCY DATABASES	76
SWIMMING POOLS	78
Obtaining a certificate and Property Manager Requirements	79
SMOKE ALARMS	80
Requirements for landlords and agents	80
Requirements for tenants	80
REIMBURSEMENT FOR REPAIRS ⁵⁹	84



CPD TOPIC 1 – 2020 REAL ESTATE REFORMS &

CPD TOPIC 2 – RULES OF CONDUCT

WHAT YOU WILL LEARN

- The context of the 2018 legislative reforms to the property services industry
- The three key documents that support the reforms:
 - *Property and Stock Agents Amendment Regulation 2019* (the Amendment Regulation)
 - *Property and Stock Agents (Qualifications) Order 2019* (the Qualifications Order)
 - Revised Continuing Professional Development (CPD) requirements
- Explain how the proposed Amendment Regulation, Qualifications Order and CPD requirements will work together to implement the 2018 reforms

BACKGROUND TO PROPERTY SERVICES INDUSTRY REFORMS

In NSW, real estate and property services agents were governed by the *Property, Stock and Business Agents Act 2002* (the Act). The Act establishes licensing requirements, rules of conduct and other obligations of agents who work in the sale or leasing of real estate properties, businesses and livestock.

As of the 23rd March 2020 the above Act ceased to exist and the new Act is known as *The Property & Stock Agents Act 2002*¹.

REFORM POSITION PAPER PUBLISHED NOVEMBER 2016

In November 2016, the NSW Government announced a package of reforms for the industry as explained in the [Real Estate and Property Services Industry Reform Paper 2016](#) (the Reform Paper).

These reforms aimed to:

- enhance educational and professional standards across the industry
- improve accountability and transparency
- streamline the licensing framework
- strengthen Fair Trading's compliance and enforcement powers.



MAJOR REFORMS TO PROPERTY INDUSTRY ENACTED IN 2018

Following an extensive consultation process with industry stakeholders, the NSW Parliament passed the *Property, Stock and Business Agents Amendment (Property Industry Reform) Act 2018* (amended Act) on 7 March 2018 as the first step in implementing the reform package.

Since the Act was passed, the [Better Business Reforms](#) of 2018 have introduced further changes including:

- 1, 3 or 5 year licence terms (to commence with the rest of the package in March 2020), and
- clarifying obligations of licensees and auditors in relation to the annual auditing of trust accounts and the lodgement of reports on those audits with Fair Trading (commenced on 1 July 2019).

SUPERVISION GUIDELINES

Supervision guidelines for licensees in charge have been updated to reflect the changes made by the amended Act.

COMMENCEMENT TOOK PLACE 23RD MARCH 2020

The amended Act, the Amendment Regulation, the Qualifications Order and the CPD requirements all commenced on **23 March 2020** to coincide with the commencement of the new national Property Services Training Package.

ENHANCED DISCIPLINARY POWERS²

The amended Act now gives Fair Trading the power to temporarily suspend a licence or a certificate of registration while an investigation into the agents' conduct is underway. It also allows Fair Trading to:

- Introduce a power to immediately cancel a licence or a certificate of registration that was obtained using false particulars or that has been issued in error,
- Introduce a power to suspend a licence for failure to submit an audit.



LICENSING FRAMEWORK AND THE QUALIFICATIONS ORDER

STREAMLINING THE LICENSING SYSTEM

The previous Act (The Property Stock & Business agents Act 2002) required people acting as an agent in the real estate and property services industry to hold a certificate of registration or licence. A licence can be held by an individual or corporation, while certificates of registration can only be held by individuals.

Under section 8(1) of the amended Act, the licensing framework has been simplified so that the functions of a buyer's agent, on-site residential property management and business agent are all covered under the real estate agent licence.

As a result, the licensing system will offer licences and certificates of registration in **four categories** ³:

- Real estate agent
- Stock and station agent
- Dual real estate and stock and station agent
- Strata managing agent

The new licensing system will also have three levels of licence categories, reflecting different levels of qualifications and experience:

- Certificate of registration (assistant agent)
- Class 2 licence (licensed agent)
- Class 1 licence (licensee in charge)

Figure 1: Comparison between previous and new licensing system

Licence level under previous Act	Agent type	Licence level under new Act	Agent type
Licence	Agent nominated as licensee in charge	Class 1	Licensee in charge
Licence	Agent (not nominated as licensee in charge)	Class 2	Licensed agent
Certificate of registration	Salesperson or registered strata manager	Certificate of registration	Assistant agent



The certificate of registration allows a person to perform the functions of an assistant agent, currently known as a salesperson or registered strata manager. Assistant agents perform entry-level roles in one of the above three areas (real estate, stock and station, strata management), while they obtain the qualifications and experience necessary to become a fully licensed agent, which will require a class 2 licence. (A class 2 licence is equivalent to the previous full agent's licence).

A person who is working as a licensee in charge of a business will be required to obtain a class 1 licence ⁴.

QUALIFICATION REQUIREMENTS FOR A LICENCE AND CERTIFICATE OF REGISTRATION

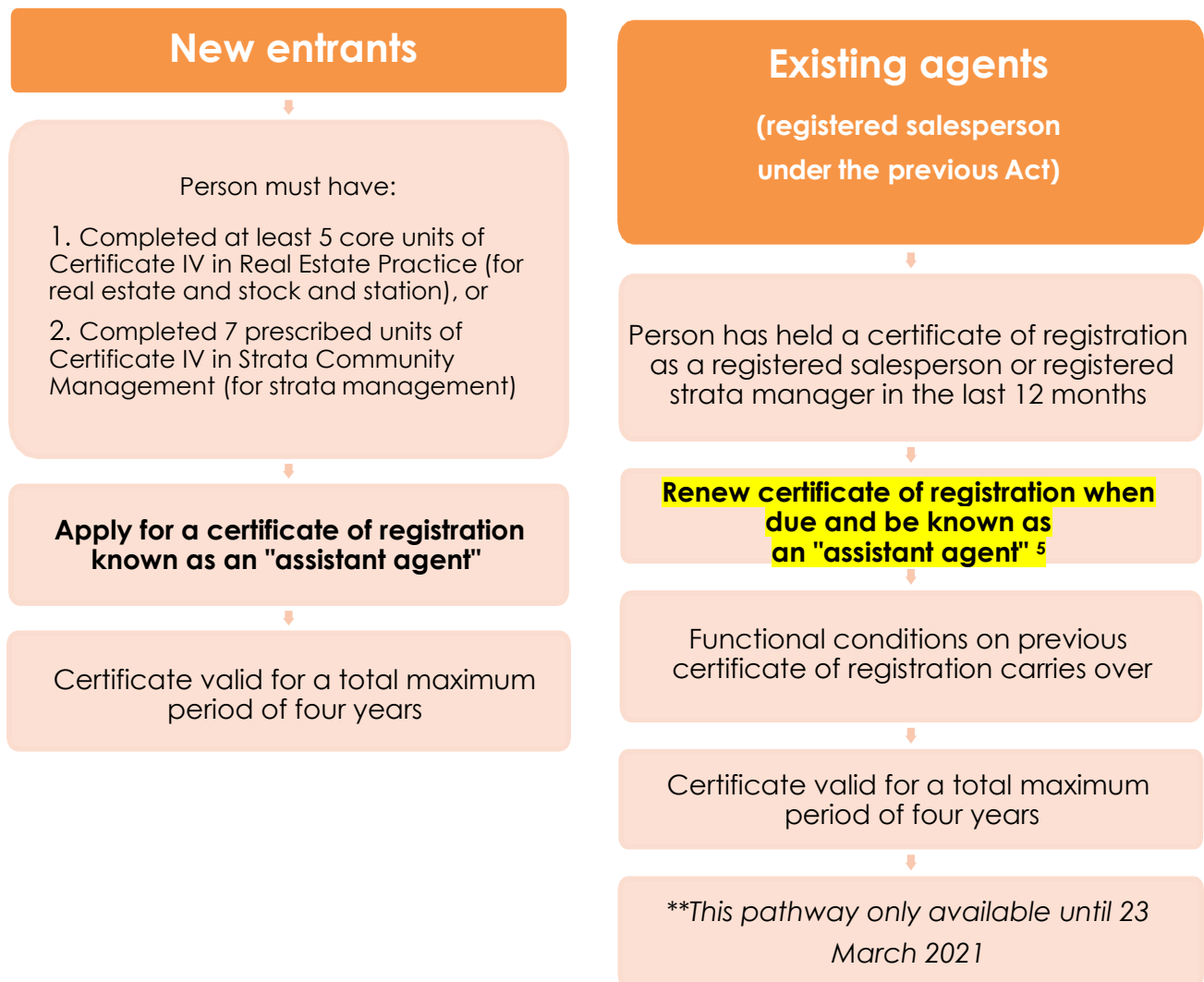
Section 15(1) of the Act provides that the Minister may approve qualifications that are required for the issue of a licence or certificate of registration by order published on the NSW legislation website. A person must satisfy the relevant qualification requirements before they can be issued with a licence or certificate of registration under the Act.

The draft Qualifications Order sets out the qualification requirements for assistant agents, agents and licensees in charge. The Qualifications Order commenced 23/3/2020 and replaces the current [Property, Stock and Business Agents \(Qualifications\) Order 2009](#) and [Property, Stock and Business Agents \(Auctioneers Qualifications\) Order 2009](#).

The Qualifications Order covers applicants seeking to upskill into a higher class of licence as well as existing agents transitioning to an equivalent licence under the new framework.

The following diagrams illustrate the pathways for each licence level against the qualification requirements in the Qualifications Order.

ASSISTANT AGENT PATHWAYS – NEW ENTRANTS AND EXISTING AGENTS



Part 4 of the Qualifications Order sets out the qualification requirements to become an assistant agent.

There will be two available pathways – one for new entrants to the industry, and a transitional pathway for existing assistant agents who are a registered salesperson or registered strata manager under the current Act.

A. NEW ENTRANTS TO THE INDUSTRY

New entrants to the industry, who have never held a certificate of registration or a licence, must start by applying for a certificate of registration as an assistant agent. They will not be able to apply directly for a class 1 or class 2 licence.



The Qualifications Order requires applicants for a certificate of registration as an assistant agent in real estate or stock and station agent work to have completed at least 5 core units of the CPP41419 Certificate IV in Real Estate Practice.

For strata management related work, applicants for a certificate of registration must complete 7 prescribed units of the CPP40516 Certificate IV in Strata Community Management.

The above represents a slight change from the policy announced in the 2016 Reform Paper, which indicated that all applicants for a certificate of registration must complete 7 units of competency from the Certificate IV qualification. However, given the structure of the newly introduced Certificate IV in Real Estate Practice², the 5 core units adequately cover the basic educational knowledge and skills required to act as an assistant real estate agent or assistant stock and station agent.

Assistant strata managing agents will be required to complete 7 prescribed units, in line with the Reform Paper.

B. CURRENTLY REGISTERED SALESPERSONS AND REGISTERED STRATA MANAGERS

A person who is a registered salesperson under the previous licensing system must renew their certificate of registration by 23rd March 2021, at which point they will be recognised as an assistant agent. This is because a registered salesperson may have been granted a Certificate of registration under the previous Act on March 22nd 2020. Therefore they have a full 1 year to work under that Certificate before they renew it on 22nd March 2021 at which time they will be granted a 4 year Certificate. The person must have held a valid certificate of registration in the last 12 months to be eligible to renew their certificate. This pathway to obtaining a certificate of registration as an assistant agent will not be available after March 23rd 2021. Individuals who do not renew their existing certificate of registration before March 23rd 2021 will be required to meet the new qualification requirements, that is complete the "new" 5 module Certificate of Registration course under the new qualification CPP41419 Certificate IV in Real estate practice.

To assist the transition of existing registration holders to the new assistant agent certificate of registration, renewal letters will be sent at the usual time prior to the renewal due date.

All existing certificate of registration holders who transition to the new assistant agent certificate of registration will have a maximum of four years from the date their new certificate is issued to complete their Certificate IV and apply for a class 2 licence⁴. Individuals who do not complete their qualification (studies) and apply for a class 2 licence during this four year period will not be able to renew their certificate of registration, meaning they will no longer be able to continue working in the property



services industry, and they will not be able to re-apply to be an assistant agent for a minimum of 12 months after their certificate of registration expires. No extensions of time will be granted ⁷.

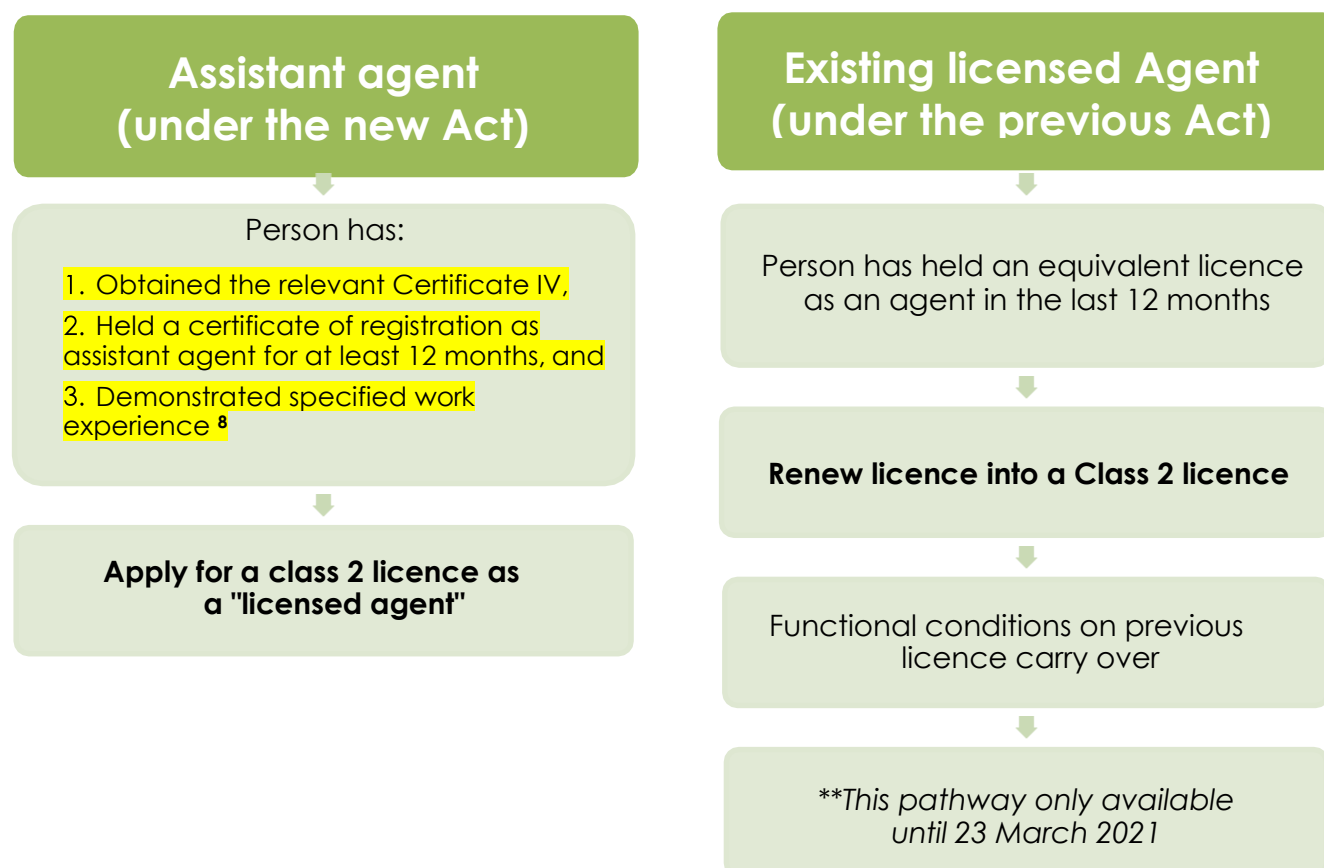
The only exception to that rule will be those assistant stock and station agents whose certificate is subject to a condition restricting them to livestock-only activities.

C. CERTIFICATE OF REGISTRATION VALID FOR A MAXIMUM TOTAL OF FOUR YEARS

Certificates of registration as an assistant agent will be issued for a maximum duration of four years, with no extensions of time or further renewals beyond that time.

This restriction is designed to ensure assistant agents progressively upskill into a full agent licence and improve the overall knowledge and expertise of the industry. Assistant agents will be required to complete a Certificate IV qualification as part of their CPD requirements during the term of their certificate of registration (see page 19 for more information about CPD requirements). By the end of the four year period, the certificate holder must either apply for and obtain a class 2 licence or cease working as an agent.

CLASS 2 AGENT PATHWAYS



Part 3 of the draft Qualifications Order sets out the qualification requirements for a licensed agent. There will be separate pathways for new entrants (assistant agents under the amended Act) and persons who are licensed as an agent at the time the reforms commenced on 23 March 2020.

A. NEW ENTRANTS – ASSISTANT AGENTS PROGRESSING TO A CLASS 2 LICENCE UNDER THE AMENDED ACT

Previously, a person must have completed a Certificate IV level qualification to become a licensed agent.

This requirement continues under the amended Act and in addition, applicants for a class 2 licence will be required to demonstrate at least 12 months' industry experience. Licensees in charge will be responsible for supervising the applicant⁹ and will be asked to verify that they have completed specific work experience tasks as set out in the Qualifications Order and specify the time period during which the applicant was supervised.

B. PREVIOUSLY LICENSED AGENTS

An agent who holds a licence under the previous framework will transition to a class 2 licence when they first renew their licence after the new laws commenced on 23rd March 2020. It will take 12 months for all existing agents to transition to the new licence categories.

A 'grandfathering' arrangement will apply to transitioning licence holders where the licence type has been streamlined into the single real estate licence. The functions of transitioning licence holders will be restricted according to the type of licence they previously held. These arrangements apply to currently licensed agents performing the functions of:

- property sales and management
- on-site residential property managers
- business agents
- buyer's agents

The above 4 license categories have now been absorbed into one single license category being the Real Estate License category which is only available by completing the new qualification CPP41419 Certificate IV in Real Estate Practice. This means that any one completing the new qualification will not only hold the Real estate license category, allowing them to list and sell real estate but also hold the other 3 license categories of onsite residential property manager, business agent and buyer's agent as mentioned above.

The 'grandfathering' arrangements will mean that existing license holders will automatically transition to a Class 2 license and continue to hold what will be a "restricted" licence in their above categories, but no new restricted licences will be issued.



For example, an agent currently licensed to carry out business agent functions will receive a real estate class 2 licence conditioned to **business agency work only** ¹⁰. They will not be able to offer the services that other Class 2 License holders offer such as a Real estate agent. Such licence holders would be able to continue offering services in that respective area of their marketplace only. If they wish to offer other services, they will be required to continue further study of the new CPP41419 qualification and once completed, they will be able to offer the full range of real estate services in all of the above mentioned categories.

Industry participants see these conditions as important to prevent inexperienced existing agents from starting to perform new functions. If these licence holders wish to obtain a full class 2 licence, they will need to become a fully licensed agent and meet the same requirements as a new licence applicant, including completion of a relevant Certificate IV qualification in the new licensing course. The old pathway to a license Course CPP40307 Certificate IV in Property Services ceased on 22/3/2020 and the new Course Certificate IV in Real Estate Practice CPP41419 commenced 23/3/2020.

These arrangements similarly apply to an assistant agent and a licensee in charge who has a condition on their licence and is transitioning to the new licensing system.

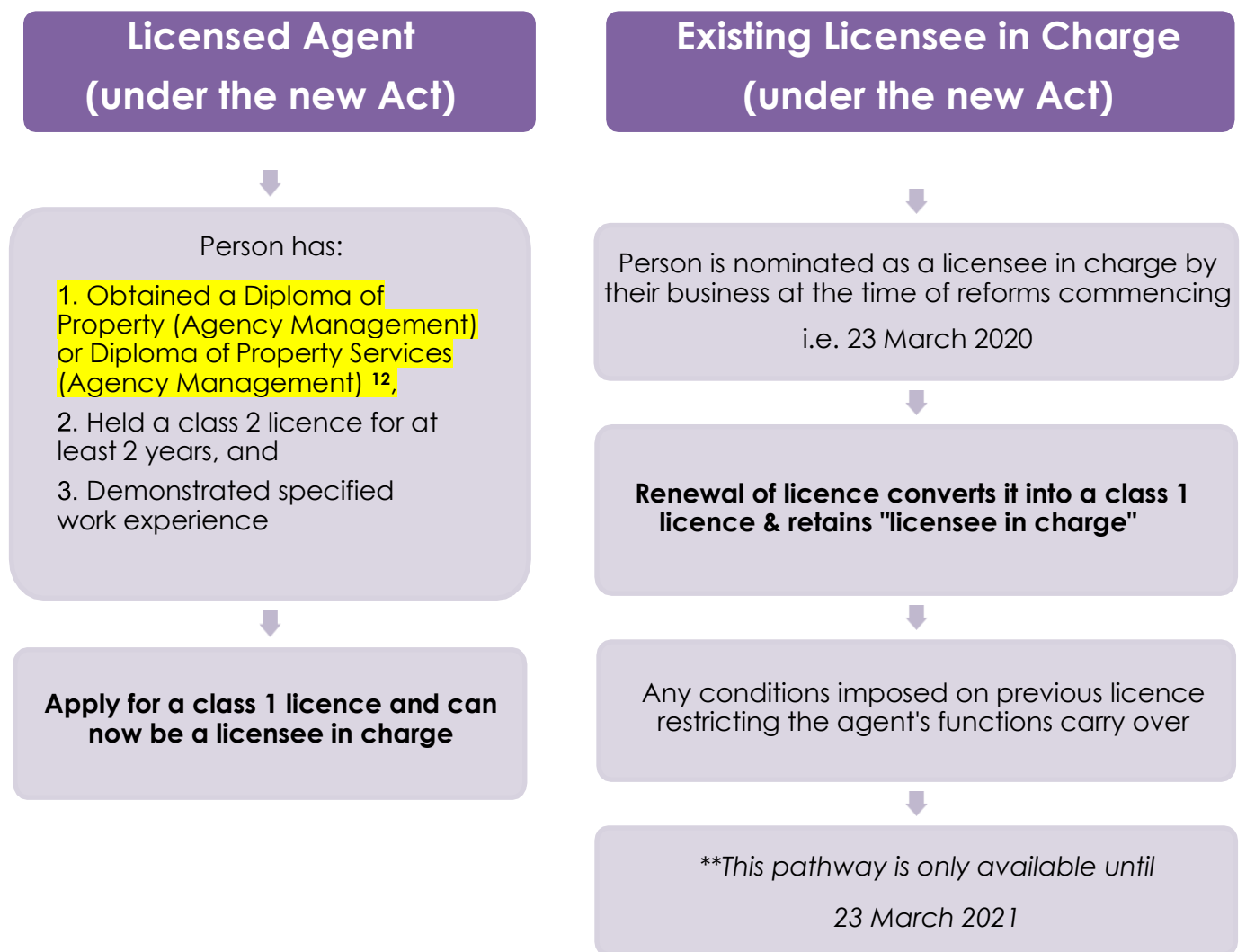
C. DUAL LICENCE AS A REAL ESTATE AGENT AND STOCK AND STATION AGENT

The new licensing framework will further introduce a dual class 2 licence for persons who wish to practice as an agent in both the real estate and stock and station categories ¹¹. This reduces red tape for agents working in both rural and urban settings as they won't need to apply for two separate licences.

The dual licence will enable persons who have satisfactorily completed 18 prescribed units of a CPP41419 Certificate IV in Real Estate Practice to act as both a real estate agent and stock and station agent.



CLASS 1 AGENT PATHWAYS



As licensees in charge, class 1 licensees perform significant oversight and agency management functions, including responsibility for authorising all withdrawals from trust accounts, proper supervision of agents and assistant agents, and ensuring compliance with all other regulatory requirements including CPD points.

Accordingly, applicants for class 1 licenses will be required to attain higher standards of education and experience than class 2 licensees including the requirement to achieve qualifications in business management.

The new Act also requires all employees to be 18 years or older and restricts different Classes of agents from carrying out certain duties...for example, Assistant agents will not be able to enter into agency agreements, only Class 1 or Class 2 agents will be entitled to carry out this task. All agents will still be required to do CPD points but meet different requirements in doing so ¹³.

The specific new qualification requirements for class 1 licenses are set out in Part 2 of the draft Qualifications Order.



A. NEW ENTRANTS – CLASS 2 AGENTS PROGRESSING TO CLASS 1 UNDER THE NEW ACT

To be eligible for a class 1 licence, the applicant must have held a class 2 licence (or an equivalent level of licence under the old Act) for at least 2 years¹⁴ and completed a Diploma of Property (Agency Management) from a registered training organisation, or another recognised equivalent qualification.

Applicants for class 1 licences must also be able to demonstrate evidence of specified work experience, verified by a licensee in charge, as set out in the Property & Stock agents (Qualifications) Order 2019.

B. CURRENTLY NOMINATED LICENSEES IN CHARGE

Currently the role of licensee-in-charge is undertaken by a nominated agent without any additional qualification or experience. To avoid disruption to business, a 'grandfathering' arrangement will be introduced to provide a transitional pathway to the amended Act. The transitional pathway for existing nominated licensees in charge will only be available until 23 March 2021. The applicant must be the sitting licensee in charge of their business at the time the reforms commenced to be eligible for this pathway. That was, by 23 March 2020.

OVERVIEW OF THE AMENDMENT REGULATION AND NEW RULES OF CONDUCT

The Amendment Regulation amends the *Property, Stock and Business Agents Regulation 2014*. The amendments provide the detail needed to fully implement the real estate and property service industry reforms.

The following provides more detail and context on key provisions in the draft Amendment Regulation, including:

- functions of agents and assistant agents
- kinds of material facts an agent must disclose to a prospective buyer
- requirement to obtain three different quotes for maintenance and repair work, except in certain circumstances.
- Changes to Trust account requirements.

PART 1 PRELIMINARY

Name of Regulation (clause 1)

Given that business agent functions are covered by the single real estate licence under the amended Act, the new regulation will be declared as the *Property and Stock Agents Regulation 2019*.

PART 2 CONDUCT OF AGENCY BUSINESS

Functions of agents and assistant agents (new – clause 4A – 4C)

Clauses 4A to 4C of the draft Amendment Regulation prescribe the types of functions that a real estate agent, stock and station agent and strata managing agent may exercise, according to each class of licence. This is to ensure that people undertake roles and responsibilities suitable to their qualifications and expertise.

For instance, assistant agents will generally not be permitted to enter into a contract or transaction on behalf of any party, except for a residential tenancy agreement¹⁵ or livestock transactions.

Assistant agents must be appropriately supervised by a licensee-in-charge with a class 1 licence when carrying out these functions, as per section 11 of the Act. Only class 1 licence holders may authorise the withdrawal of money from a trust account.



PART 6 EXEMPTIONS

Exemption for on-site residential property managers (new – clause 46B)

Clause 46B of the Amendment Regulation exempts an agent who performs on-site residential property manager functions from having to comply with the Act, but only if that agent's functions relate to a residential property with no more than 20 lots ¹⁶. This provision was developed in addition to the announced reforms, based on concerns raised by stakeholders that particular parts of the industry may become unviable if entry requirements are imposed that are disproportionate to the risks in these settings.

The exemption will therefore only apply to small on-site residential property management businesses that oversee up to 20 lots.

Exemption from qualification requirements for certain agents (new – clause 46C)

Fair Trading has recognised that there is a significant number of previously licensed agents who have sufficient experience and skills but left the industry for a period of time. Under current requirements, agents would have to obtain another Certificate IV recognised in the new Qualifications Order (CPP41419) to be eligible to apply for a new licence for when they return to the industry, which may be an unnecessary burden.

Clause 46C of the Amendment Regulation therefore provides for applicants for a class 2 licence to be exempt from obtaining the qualifications required for the issue of that licence, if Fair Trading considers that the person previously held an equivalent licence for at least 2 years and that licence did not expire more than 5 years before the commencement date of the amended Act. (23/3/2020)

This means that the licence must not have expired before 23 March 2015 ¹⁷.

For example, a person wishes to recommence employment today. They held a license for 2 years between August 2017 and August 2019. They are eligible to re enter the industry as a Class 2 license holder.

However, a person who held a license for 2 years between December 2012 and December 2014 will not be able to use Section 46C as their license expired before 23/3/2015. They do not meet the 5 year expiry rule.



PART 7 GENERAL

Disclosure of kinds of material facts (new – clause 54)

Under section 52 of the previous Act, it is an offence for an agent to induce a person to enter into a contract or arrangement by means of a false misleading or deceptive statement, representation or promise or by concealment of a material fact. However, the law does not specify what comprises a material fact and agents' disclosure requirements are not sufficiently clear.



To improve clarity for agents, the amended Act provides that the obligation not to conceal a material fact only applies to facts of the kind prescribed by the regulations that the agent knows or ought reasonably to know. The agent will be liable if they fail to disclose these facts whether or not they intended to conceal them from the prospective buyer.

Clause 54 of the Amendment Regulation prescribes the kinds of material facts that an agent must disclose. Material facts relate to facts that must be disclosed to a prospective purchaser if the agent is aware of them, such as (but not limited too)

- That the property was subject to flooding or bush fire within the preceding 5 years
- That the property was the scene of a serious crime within the preceding 5 years such as murder or suicide.
- That the property poses known significant health or safety risks
- That the property is listed on the Loose Fill Asbestos Insulation register.¹⁸

Clause 54 also provide that an agent should also disclose to a prospective purchaser other material facts that a buyer indicates are important to their decision whether to purchase a property and of which the agent is aware or can reasonably become aware.

The proposed list of material facts aims to strike a balance between ensuring that the agent is not unreasonably burdened by disclosure obligations on the one hand, and the need to protect consumers' right to know about information important to their purchase decision. For example, an agent will need to disclose if there was a suicide or murder that occurred on the property within the last five years.

Agents have obligations to commission and attach prescribed documents to a contract for the sale of land under the *Conveyancing (Sale of Land) Regulation 2017*. To avoid duplication, these documents and the information in them are not prescribed as material facts.



The list of material facts is also being considered together with agents' disclosure obligations in the *Residential Tenancies Regulation 2019*. The aim is to achieve

consistency in the rules for real estate agents who work on residential tenancy matters and for those that engage in a wider range of property services work.

SCHEDULE 1 GENERAL RULES OF CONDUCT APPLYING TO ALL LICENSEES AND REGISTERED PERSONS

Fees and charges (new – clause 20)

Clause 20 requires an agent to clearly explain to a client the fees and charges payable under the terms of an agency agreement, including promptly advising them of any changes to the fees and charges. This will help consumers to be more aware of the fees and charges they may have to pay. This may also motivate consumers to consider a wider range of options before they decide on an agent, assisting competition in the industry.

Agent to pay rental income monthly to landlord (new – clause 21)

Clause 21 of the Amendment Regulation will require agents to pay rental money received on behalf of a landlord under a tenancy agreement to the landlord at the end of each calendar month. In other words, the maximum period of time an agent can hold onto rental money is one month.

The new rules will also require agents to transfer rental income (less authorised expenses) to landlords at the end of each month unless specifically instructed not to do so by their client ¹⁹. This means that an agent's property management trust account should revert to a "zero" balance at the end of each calendar month (in theory) making it much easier to identify what money is still left in the trust account.

Agent to establish separate trust accounts for rental and sales money (new)

Under the announced reforms, agents will also be required to establish separate trust accounts for rent and sales money. The aim of this reform is to improve agents' accountability and transparency by making it easier to ensure that agents do not hold rent money without remitting it to the landlord, and not mixing rental and sales money in a single trust account. This is a mandatory requirement ²⁰.



This rule will be retrospective and require all currently functioning real estate businesses to set up 2 separate trust accounts and split the funds currently in the single Trust account into both sales and rental monies.



Limits on value of certain gifts or benefits (new – clause 22)

Section 53F of the amended Act provides that a licensee or certificate holder must not request or accept any gift or other benefit from another person in circumstances that may be considered to give rise to a conflict of interest. The regulations may prescribe a maximum value of gifts and other benefits that an agent may receive before section 53F will apply.

The Amendment Regulation sets this value at \$60, as specified in the Reform Paper, reflecting the value of gifts that may be considered as having only token value (such as a gift of thanks for good service). This also reflects the value of a gift that would be unlikely to induce an agent to alter their conduct as a result of receiving or being promised the gift or benefit.

Section 53F does not apply in certain instances, such as where the gift has been provided in accordance with the terms of an agency agreement or as a gift in gratitude for services provided under the agency agreement ²¹.

SCHEDULE 2 RULES SPECIFIC TO REAL ESTATE AGENTS AND ASSISTANT REAL ESTATE AGENTS ART

Agent to obtain quotes for maintenance and repairs (clause 13)

Clause 13(1) of the current Regulation requires real estate agents and assistant real estate agents managing a rental property to promptly respond to requests for maintenance or repairs to the property. The Amendment Regulation expands this clause so that in attending to an owner's instructions for maintenance or repairs, an agent must take all reasonable steps to obtain quotes from three different providers for the work. However, an agent does not need to comply with this requirement where the work is urgent, the owner instructs that 3 quotes are not required, the work required is less than \$2,000 or if it is not reasonable or feasible for the agent to obtain three different quotes. Where it is unreasonable to obtain three different quotes, the agent must provide a written explanation to the owner ²².

SCHEDULE 3 RULES SPECIFIC TO STOCK AND STATION AGENTS AND ASSISTANT STOCK AND STATION AGENTS

Theft of livestock (new – clause 7A)

Clause 7A of the draft Amendment Regulation provides that an agent who suspects that livestock may have been stolen or otherwise illegally obtained must inform a police officer as soon as reasonably practicable. This provision was not discussed as part of the Reform Paper and has been included following industry consultation.



Agent to obtain quotes for repairs and maintenance (clause 11)

Similar to the proposed change to clause 13(1) under Schedule 2 of the Amendment Regulation, a stock and station agent or assistant stock and station agent managing rural rental properties must obtain three quotes in attending to an owner's instructions for maintenance or repairs. The same exceptions in clause 13(1B) of Schedule 2 will also apply.



CONTINUING PROFESSIONAL DEVELOPMENT



The new regulatory regime aims to improve educational and training standards across the industry and uplift agents' skills and knowledge. To achieve the objectives of this broader regime, the CPD framework has also been modernised. The new CPD requirements will ensure that agents are trained about any changes to legislative requirements and can readily respond to emerging market practices.

PREVIOUS APPROACH TO CPD

Under section 15(4) of the Act, a person did not have the qualifications required for the reissue or restoration of a licence or certificate of registration if that person failed to comply with a condition of their certificate requiring the holder to undertake professional development. To date, licensees and certificate of registration holders were required to comply with the CPD requirements in obtaining 12 points of CPD points prior to the anniversary of the renewal of their certificate or license as set out in the Director General's Guidelines for CPD. If the person failed to meet their CPD requirements, they were ineligible for renewal ²³.

NEW CPD FRAMEWORK

Licensed agents and assistant agents will still be required to complete CPD on an annual basis as a condition of their licence or certificate of registration under the current CPD framework. However, the individual CPD requirements for each licence level have been strengthened, which includes increased hours of training and dividing CPD into compulsory and elective topics.

The new CPD framework will be expressed as a simplified straightforward set of requirements rather than the longer narrative form of the previous Guidelines. Fair Trading, in consultation with industry representatives on the Real Estate Reference Group, will regularly review the annual CPD requirements and consider the compulsory topics to ensure that these remain appropriate.

CPD completion will be based on hours rather than the current points-based system. The CPD year will run from 23/3/2020 to 23/3/2021 and will be the same time frame for subsequent years ²⁴.



COMPULSORY AND ELECTIVE TOPICS

Previously, agents of all licence levels were required to complete 12 points of CPD over a 12-month period before the renewal due date of their licence. This generally took 4 hours to complete, with points divided across a combination of CPD topics from Category 1 (1 point per hour) and Category 3 (3 points per hour).

The NSW Government announced in the Reform Paper that under the new framework:

- annual CPD points for licensees and licensees in charge will be increased from 12 points to 6 hours
- CPD will be split into 3 hours of compulsory topics and 3 hours of elective topics
- licensees in charge and Class 1 license holders must complete an additional 3 hours of CPD taking their total hours of CPD to 9 hours, focusing on business skills with this requirement set to commence after 23/3/2021. Until that time Licensees in charge and Class 1 license holders must complete the mandatory 6 hours of CPD as other Class 2 license holders will.

A list of compulsory and elective CPD topics, including business skills topics for licensees in charge, is included in the CPD requirements document.

These reforms have been further adjusted to ensure that CPD requirements are appropriate for different types of agent work. CPD for stock and station agents has been reduced in accordance with the announced policy in the [Better Business Reforms](#) of 2018. For example, given the relatively lower risk involved in handling livestock sales and transactions, stock and station agents will be required to complete 3 hours of compulsory CPD each year, with licensees in charge completing an additional 3 hours of business skills topics.

Figure 2 on the following page compares the previous and new CPD requirements according to each licence level and category.



Figure 2: previous and new CPD requirements ²⁵

License level	Previous requirements	New requirements
Class 1	Licence holder must complete 12 points of CPD each year.	<p>Licence holder must complete at least 9 hours of CPD each year:</p> <p>a) 3 hours of compulsory CPD topics</p> <p>b) 6 hours of elective CPD topics, which includes 3 hours of business skills topics.</p> <p>NB. additional 3 hours of business skills topics not set to commence until 23/3/2021</p> <p>Stock and station licensees in charge must complete:</p> <p>a) 3 hours compulsory topics</p> <p>b) 3 hours business skills topics</p>
Class 2	Licence holder must complete 12 points of CPD each year.	<p>(A) Licensed real estate agents and strata managing agents must complete at least 6 hours of CPD each year:</p> <p>a) 3 hours of compulsory CPD topics</p> <p>b) 3 hours of elective CPD topics</p> <p>(B) Licensed stock and station agents must complete at least 3 hours of compulsory CPD topics each year</p>
Certificate of registration	Certificate of registration holder must complete 12 points of CPD each year.	<p>(A) Assistant real estate agents and assistant stock and station agents must complete at least 3 units from the CPP41419 Certificate IV in Real Estate Practice each year</p> <p>(B) Assistant strata managing agents must complete at least 3 units from the CPP40516 Certificate IV in Strata Community Management each year</p> <p>Assistant stock and station Agents conditioned to stock related activities only are required to complete 3 hours of compulsory CPD topics each year ²⁶</p>

In summarising the above table,

Agents will no longer have to complete a CPD course BEFORE they renew their qualification. Agents will be offered 1,3 or 5 year licensing options but still be required to do their CPD on an annual basis but will be able to do a course anywhere between 23/3/2020 and 23/3/2021.

This will assist the "Licensee's in charge" to be able to conduct CPD with all their staff at once, rather than the individual staff member going off and doing CPD on their own. As the "Licensee in charge" is now responsible to ensure all staff have completed their CPD course, it makes it much easier to ensure compliance if all staff train at one time together. The old requirement of completing a CPD course before the agent's license was due made it very difficult for the Licensee in charge to monitor who had and had not completed their mandatory CPD requirements. Now that the Licensee in charge is responsible for ensuring the agency complies with CPD training it is beneficial that a course be conducted in a group setting, having all employees attend at one time. This would ensure that the "Licensee in charge" has met the requirements in ensuring that all staff have completed their annual CPD hours ²⁷.

Notwithstanding the above, it is not compulsory for all agents in one office to train together and individual agents are free to conduct their own CPD requirements as and when they deem fit, ensuring at least they have completed the training prior to the 23/3/2021.

Certificate of Registration-Assistant Agents.

Must complete Certificate IV in Property Services training within 4-year period with a minimum of 3 modules per annum – these 3 modules count as their CPD training.

Class 2 licence

- 6 Compulsory hours of CPD in the year 23/3/2020 to 23/3/2021 and subsequent years consisting of:
 - 3 hours mandatory topics (set by Fair Trading)
 - 3 hours elective topics

Undertaking training for Diploma in Property will be considered in lieu of elective CPD.

Class 1 licence

- 9 Compulsory hours of CPD in a calendar or financial year period consisting of:
 - 3 hours mandatory topics
 - 3 hours elective topics
 - 3 hours business related topics (commences 23/3/2021) ²⁸



FOUR YEAR DEVELOPMENT PATHWAY FOR ASSISTANT AGENTS

Assistant agents will be required to complete competency units from a relevant Certificate IV qualification for their CPD. In combination with the core competency units required to enter the industry, this will ensure that assistant agents complete enough competency units to obtain the full Certificate IV qualification within a total of four years during which their certificate of registration is valid. A minimum of 3 units of competency must be completed each year. Most importantly, it will allow assistant agents to build on their knowledge while gaining on- the-job skills and experience to qualify for an agent.

At the completion of the 4-year period, the assistant agent **MUST** be able to produce a "Statement of Attainment" from a Registered Training Organisation (RTO) showing successful completion of their licensing course and immediately apply for their Class 2 real estate agents license. Work experience evidence will also be required and will need to be authenticated by their supervising Licensee in charge.

If the assistant agent fails to complete their studies over this 4-year period, they must immediately cease working in the industry and cannot return to the industry for 12 months at which time they will start over again as an assistant agent.

Assistant agents are able to complete the Certificate IV training and be awarded their "Statement of Attainment " from their attending RTO before the 4 year period and can apply for a Class 2 license at the completion of their studies.....so it is not a requirement that they take 4 years to complete their course. The 4-year mark is the maximum time allowed to complete their studies and is not a minimum time requirement.

Notwithstanding the above time constraints, it is still a requirement that the Assistant agent have a minimum 12 months industry experience before they apply for a Class 2 agents license so this in effect, sets a minimum time frame for studies for an assistant agent.²⁹

Assistant stock and station agents seeking to perform stock-related activities only, may seek an exemption from this CPD requirement when applying for or renewing their certificate of registration and will instead be required to complete 3 hours of compulsory topics each year. This will apply only to existing certificate holders who transition over as assistant agents from March 2020 onwards and will not be available to new applicants.



APPROVED CPD TRAINING PROVIDERS

Under the reforms, it was proposed that the delivery of compulsory topics would be limited to only industry associations, government agencies and other entities approved by the Minister.

As part of ongoing discussions with the industry, NSW Fair Trading has allowed certain RTO providers to deliver compulsory CPD topics. These RTO's must be of good fame and character and be able to demonstrate that they have the skills, knowledge and resources to adequately meet the requirements set down by Fair Trading and the outcomes required by the compulsory learning areas. These RTO's will need to re-apply yearly to continue to deliver compulsory CPD training. ³⁰

In determining the list of approved providers, the NSW Government has the power to remove a provider's recognition if the provider is found to be of poor quality or having engaged in deceptive or fraudulent practices.

Elective topics may also be delivered by Registered training organisations (RTOs) or other various industry associations. Those organisations that wish to deliver elective learning topics will not need to have Fair Trading approval.

A list of the compulsory and elective topics will be published on the Fair Trading website along with those entities that have been approved to deliver the compulsory CPD training.

RECORD KEEPING REQUIREMENTS

Previously, licensees and certificate of registration holders had to provide evidence to NSW Fair Trading to demonstrate that they had met the CPD requirements when they renewed their license. This involved producing a "Certificate of Completion" from the relevant training provider.

Fair Trading is developing an online tool to allow CPD providers and other qualification providers to directly report on the completion of training activities by licence and certificate holders. Until this new tool is available, CPD records will continue to be retained by the licence or certificate holder.

Licensees in charge will be responsible for ensuring that agents and assistant agents complete their respective CPD requirements, and the retention of all records for three years.



CPD TOPIC 3 – RISK MANAGEMENT

WHAT YOU WILL LEARN

Other than the risks that all businesses face, what particular risks do we face in the real estate sector?

The purpose of this unit is to provide participants with the knowledge and skills required to minimise risk to all aspects of real estate, stock and station, business, buyers, on site managers agency business. Participants at the end of the workshop will be able to:

- Explain the potential risks to clients associated with agency operations
- Outline the approaches to risk minimisation implemented by agencies
- Outline the way of monitoring and reporting risk in agency operations and;
- Outline the role of insurance in managing agency risk

AGENCY RISK – AN INTRODUCTION

Real Estate Agents and their staff deal with the public on a day-to-day basis. The product they are involved in is real estate, or more correctly the sale and leasing of land and the improvements thereon. Because real estate involves valuable assets dealing with the public involves risk. In addition, being in business involves risk as well and generally part of the income the business earns is a reward for the risks that they face. The form of risk that encompasses real estates is quite diverse. It stems from varied and many sources when we as Agents deal in all real estate matters.

The risk is highlighted by common law and legislation. To ignore identifying risk is to suffer the full consequences of what happens when things go wrong. For example, if we drive through every red light we come across we run the risk of being hit by another vehicle in the intersection. If we continually do it at peak times, the chances of being hit by another car are very high. If we do it in the early hours of the morning the risk is most probably lower, but the consequences are the same or worse if we are hit. We mitigate or lessen the risk by ensuring we do not enter the intersection when the light is showing red.

Another analogy is speeding. We all know it is against the law to speed, yet we still do it on occasions, especially if the risk of being caught is very low. However, most of us obey the law when we see the police, or are confronted with a speed camera or a weekend where there are double demerit points. If we are not concentrating, we could still speed through speed cameras, and if we do, we suffer the consequences, i.e. a fine and demerit points.



Being in real estate is no different. In our day-to-day work we face all sorts of risk, and in most cases deal with it as we go. As Agents we are most probably a little carefree when considering all the risks that we face in our day-to-day work. This is why the Office of Fair Trading has set down that we must assess our risk environment and so come to terms with the risks we face, and put in place risk management policies.

In this topic we are going to Analyse the Potential Risks to an agency and its clients, look at the implementation of agency policies and procedures to minimise risk, and look at what is required to establish ongoing monitoring and reporting systems to minimise risk to the agency and its clients.

DEFINITION OF RISK

The Butterworth's Business and Law Dictionary defines risk as:

"A possibility, chance, or likelihood of harm, hazard, or loss. A person is at risk when he or she is exposed to danger, peril or injury. A risk may be moral, physical or economic. If a person has created a real risk and has not taken reasonable steps to eliminate it, he or she has breached his or her duty of care and will be liable for any damage caused by that breach."

The chance of something happening that will have impact upon your objectives. Put another way

Business Risk:

It is the potential to incur a liability or loss as a result of providing a professional service ³¹

In other words, it is the change of something happening that could impact on the business negatively in some way. The result of the impact could be as simple as stress to monetary, effect on reputation, punitive (e.g. fines or even imprisonment), loss of employment, or personal suffering.

We must also be mindful that in common law, we as Real Estate Agents, have a Duty of Care to everyone who is affected by our acts and or omissions as a result of carrying out our professional services.

A breach at any time of our Fiduciary Duty can lead to an action against us for that breach.

So there is a need for all of us to be aware of the risks we face. We need to have the systems that will allow us to identify, assess risk, plan and implement risk minimisation strategies.



SOURCES OF RISK IN REAL ESTATE

Risk in the business environment is everywhere. It was once said that risk is like rust... it is there and will not go away. However, to ignore risk is foolish as the consequences, depending on the type of risk that is ignored can threaten the very business we rely on for our income. One of the reasons why we have a profit in business is to compensate us for some of the risks we take.

Real estate is no different from business in general. We as Agents supply a professional service to the public. As such there are many sources of risk which we must be aware of and be prepared to tackle. Risk can arise from many different

sources and in many different areas. Because of this we must identify those sources and do something about it.

We can break risk down into several areas, some are imposed on us through legislation, and others are of our own making. We cannot control the economy and changes in it, neither can we control legislation and the way it is changed or interpreted. These risks we have to take on board and then adapt our actions to ensure that the business continues. Other risks arise because of negligence and oversight. Failure to follow acceptable business principles, failure to monitor the actions and results of our business and the failure to keep proper financial control can lead to business failure and bankruptcy.

What are the main areas of risk in a real estate agency and how do they arise?

First of all, we must consider what type of Agency we are and what services we provide. Then the extent of risks we face depend on the services that we do provide, and the way we provide them.

All our dealings whether between us the agency and clients, customers and the public at large become sources of risk to the agency. Failure to ensure staff have proper instructions and are trained for the tasks they do magnifies that risk. Changes in the economy, political circumstances and changes all add to the risks we face in our day-to-day work. So, the possible cause of risk will include, but are not limited to: -

Source of Risk in a typical real estate office.

- Economic and financial circumstances
- Failure to monitor staff performance
- Administration and systems failures
- Failure to have proper money handling systems
- Technological change



- Political changes
- Physical and personal security
- Failure to monitor KPI's
- Failure of management systems and control
- Noncompliance with legislative requirements
- Inadequate or improper office practices and procedures
- Poorly trained staff
- Unsound recruitment practices
- Unlicensed trading
- Lack of knowledge of the legislation you operate under
- Poor research skills
- Lack of understanding of consumer protection legislation
- Inability to identify conflicts of interest
- Unconscionable conduct
- Poor conflict resolution skills
- Failure to adhere to legislative requirements
- Undertaking illegal activities
- Breaching consumer protection legislation

Remember that all Agents have a duty to comply with all legislation and common law requirements. Under the Rules of Conduct, Rule 1, all Agents are required to know and abide by all legislation that covers the business of agency work. Acts of Parliament that cover Agents are numerous, but the main ones are: -

1. Property & Stock agents Act 2002 and Regulations 2003
2. Fair Trading Act 1987 and Fair Trading Regulations 2019
3. Contract Review Act 1980 –
4. The Privacy and Personal Information Protection Act 1998 (PPIP Act)
5. Anti-Discrimination Act 1977 (NSW)
6. Corporations Act 2001
7. Strata Schemes Management Act 2015
8. Conveyancing Act 1919
9. Business Names Act 2002
10. Financial Transactions Report Act 1988
11. Real Estate Industry Award 2010
12. Clerical & administrative State Award 2006
13. Valuers Registration Act 1975
14. Retirement Villages Act 1999
15. The Work Health and Safety Act 2011
16. The Retail Leases Act 1994
17. 17 Residential Tenancies Act 2010 and Regulations 2019

In day-to-day agency work our main source of risk arises from our commercial and legal relationships we enter into with members of the public and will include our dealings with Vendors, Purchasers, Employees, Landlords, Tenants, Subcontractors, Developers, Suppliers and the public at large.



SOURCES OF INFORMATION ON RISK

The sources of information on risk are numerous, but we can classify them as follows:

Agency Records

Agency records under the new legislation have to be kept for a minimum of three years. A perusal of those records will show whether or not the agency is meeting the legislative requirements that they are required to follow. Further the records will become sources of information that will identify to principals that they have minimised the chances of being prosecuted or sued because the records are correct and complete.

Experienced Operators

Experienced real estate operators unconscionable over time build up a bank of information that helps them to avoid high-risk situations. They know how to walk the walk and talk the talk. Those that have kept abreast of government and legal requirements are less likely to fall foul of the law or public because they know what to do and not what to do.

Industry Participants

Industry organisations such as the Real Estate Institutes and The Real Estate Employers Federation (REEF) can provide information on best practice and standards that should be followed.

Literature

The greatest source of information of risk is the Internet. Access is available to all, not only to legislation but also government instrumentalities such as the OFT and ACCC, which include a lot of information on risk on their sites.

Professional Associations

Being a member of a professional organisation such as the Real Estate Institute of NSW also keeps operatives up to date with law, government requirements and the court's interpretation of the law.

Government Bodies

such as ACCC and Fair Trading. If you are in doubt about any particular subject you can enquire from the regulatory bodies about what are your duties and responsibilities.



Legislation

All legislation is obtainable off the Internet. All offices should have copies of the main legislation that governs their operations. Reference to the legislation will provide information as to procedure and what you can and cannot do.

Market Research

Market research can provide information on where markets are heading and what the public expects from you when you provide your service. Information on the movement of markets helps you plan how you will meet change. Information about what people expect helps you meet those expectations.

STAKEHOLDERS WHO ARE THEY?

The stakeholders are those who could suffer as a result of an Agent or an agency not addressing the risk environment correctly.³² They would include: -

- a. Property owners who are potential sellers or clients of the agency
- b. Property owners who have their property managed by an agency
- c. Buyers and potential buyers who deal with the agency
- d. Tenants and potential tenants who deal with the agency
- e. The owners of the agency
- f. All staff who are employed by the agency
- g. Other professionals that may deal with the agency e.g. accountants & contractors

ANALYSING RISKS

In order to be able to analyse risk in an agency situation, the agency owners need to consider and list what they see are all the potential risks facing the agency on a day-to-day basis, as well as to consider the consequences on the agency and themselves if any of the risks arose. A starting point would be to look at the causes of risks listed on page 7 of the notes, but then to consider what other risks could arise. Having done that the analysis would look at the likelihood of such risks arising. If the risk related to an area that only the owner operated in, then the chances of the risk arising would be very small. But if the area related to where duties were delegated to staff then the chances of the risk arising increase.

What procedure should we follow to analyse risk in our business? Firstly, we need to identify the risks or hazards and then we need to assess them. Examples of how we can do this are set out in **ATTACHMENT A**. The first part sets about to Identify Potential Hazards in a Sales Department of a Real Estate Office. This is then followed by your own risk Assessment of each of the activities. **ATTACHMENT B** is a risk assessment of



just one activity in the Sales Department that is of Marketing Property. **ATTACHMENT C & D** is a similar analysis but done in the Property Management Department.

You could do this risk assessment with every hazard identified on the following sales or property management tables. At the end of the process you would have a comprehensive and effective risk Management plan for nearly all identified risks within a typical agency.



SALES RISKS₃₃

Listed here are functions that have associated risks. Read through them and check to see if your office has those risks identified and strategies to minimise the risk.

ACTIVITY OR OPERATION	POTENTIAL HAZARD or RISK	✓
Market Appraisals	<ul style="list-style-type: none"> • Inadequate Inspection • Conflict of Interest • Lack of research on comparable properties. • Making false or misleading representation as to services provided • Making unsubstantiated opinions on price • Not recording evidence of information used to establish "Trust Estimate of Selling Price" (Section 72 & 73 PSA Act 2002) 	
Listing Agreement	<ul style="list-style-type: none"> • Not checking who legally owns the property • Not inspecting the property • Incorrect preparation of Agreement • Not providing a correct marketing schedule • Not disclosing discounts, rebates or commissions (Section 47 of PSA Act 2002) • Not giving a copy of guide on Agency Agreements (FTR 32) • Not explaining to Vendors, the Agency Agreement • Incorrect completion and signing of Agreement • Inadequate vendor disclosure • Not giving the owners a copy of the signed Agency Agreement within 48 hours of the last owner signing 	
Advertising Preparation	<ul style="list-style-type: none"> • Misleading and deceptive conduct • Not checking facts and claims made by vendor • Conflict of Interest • Discrimination • Breach of Privacy or confidentiality • Not including disclaimers 	
Contract for Sale	<ul style="list-style-type: none"> • Not checking that the contract for sale is complete • Not checking names of Vendor(s) on contract with names on agency agreement. • Not checking attachments are for property for sale • Not securing a copy of the contract on the file • Not copying contracts correctly • Not double-checking claims in advertisements with contract e.g. land size, zoning, easements etc. • Not check special conditions and their meaning • Giving advice that is taken to be legal advice 	

SALES

Continued

ACTIVITY or OPERATION	POTENTIAL HAZARDS or RISK	✓
Other Marketing	<ul style="list-style-type: none"> • Sign Board erected on wrong property • Unsafe location of signs • security at Open Houses • Work, Health & Safety issues at Open Houses • Privacy statements at Open Houses • Security of keys • Misleading and deceptive representation to buyers • Representations made to buyers on price 	
Other Documentation	<ul style="list-style-type: none"> • Non-compliance with Sections 47 referrals & Section 49 Beneficial interest of the PSA Act 2002 • Inadequate qualification of buyers • Discrimination • Not submitting offers or not confirming them in writing • Not filling out contracts correctly • Inadequate deposit • Non collection of deposit • Providing legal advice • Making changes to contracts outside the heavy black box • Not getting instructions to exchange in writing • Not exchanging contracts correctly • Not explaining Cooling Off periods correctly • Not transmitting the exchanged contracts to the respective solicitors within 2 working days • Inadequate minimisation of liability. (Failure to get authority to exchange) 	
Office Procedures	<ul style="list-style-type: none"> • Delays in sending sales letters • Inadequate Accounting procedures • Failure to notify tenants if a managed property is listed for sale • Failure to notify tenants when a managed property sells • Non-compliance with Privacy Act • Not ensuring all required checklists are on file and completed correctly • Failure to account to vendor when a Cooling Off period contract is rescinded • Failure to account to Vendor correctly at completion of sale 	



SALES RISK

Continued

Set out below is a sample risk assessment of the risks involved with **undertaking marketing of a property**. It identifies the hazard, risk and then the methods to be used to control them, then sets out the training required of personnel in that area and identifies any residual risk. Risk assessments can be prepared for other areas of risk within the Sales Department of an Agency.

SAMPLE RISK ASSESSMENT

Activity/Operation	Property Marketing
Hazards	Marketing is the means by which <i>ABC Realty Pty Limited</i> promotes a property for sale. Marketing includes everything done to promote the property to potential buyers including all advertisements, web marketing, editorials, brochures, signboards, open homes etc. Care needs to be taken to ensure all representations made about the property are true and based on evidence that can be produced. Claims that are found to be false or misleading are a breach of the Trade Practices Act, the Fair Trading Act as well as the Property, Stock and Business Agents Act 2002. In some cases lack of disclosing certain information in your possession can also be deemed to be misleading and deceptive conduct. There are security and OH&S issues with open houses. Placement of signage can result in public liability issues.
Risk	Risk can be very high unless Agents check all facts that they disseminate to potential buyers. Risk is high if Agents quote their view of price which is lower than the "True Estimate" they put on the Agency Agreement. Failure to follow procedures can lead to fines and claims for economic loss or damages.
Control Measures	Strict adherence to the Policies and Procedures of the Agency. All advertising to be approved by the Vendor as well as the Licensee or Sales Manager. Approved disclaimers to be on all published material Agent must check all claims against proper source e.g. land size should be checked to Deposited Plan in contract All signed to be erected by contractor with proper insurance Check lists to be used to ensure all marketing material complies Open homes to be conducted in accordance with Office Policy and Procedures for Open Homes Agents should not quote an opinion of market price that is below their "True Estimate" shown on the Agency Agreement
Training	Any staff members conducting a marketing campaign is required to hold a Certificate of Registration or a License under the Property & Stock Agents Act 2002. Sales representatives will receive additional training and mentoring as part of their induction into <i>ABC Real Estate Pty Limited</i> . Marketing and operational pitfalls will be a regular session at weekly training meetings. Inexperienced staff are to be supervised and receive specialised training on a regular basis
Remaining Risk	Providing the above measures are implemented, the remaining risk is low. However, any incident may still have moderate consequences.



PROPERTY MANAGEMENT RISKS₃₄

Listed here are functions that have associated risks. Read through them and check to see if your office has those risks identified and strategies to minimise the risk.

ACTIVITY or OPERATION	POTENTIAL HAZARDS or RISK	✓
Rental Appraisals	<ul style="list-style-type: none"> • Inadequate understanding of appraisal laws • Conflict of interest • Lack of research • Making false or misleading representations as to services provided • Not identifying possible future zoning changes 	
Listing Agreement	<ul style="list-style-type: none"> • Not checking who owns the property • Incorrect preparation of Agreement • Not completing a condition report correctly • Not explaining to owners the Agency's policies as regards Tenant selection, arrears and Repairs and Maintenance • Not giving the owners a copy of the signed Agency Agreement within 48 hours of the last owner signing • Not providing a written report of the property noting possible future repair and maintenance issues 	
Tenant Selection	<ul style="list-style-type: none"> • Not using correct application forms • Not seeking verifiable referees • Inadequate checks of tenant and references • Insufficient qualification • Conflict of interest • Discrimination • Breach of Privacy or confidentiality 	
Formal Documentation	<ul style="list-style-type: none"> • Errors in Lease preparation • Incorrect special conditions – conflict with RT Act 2010 • Error in Bond calculation • Non collection of full bond (unless as agreed) • Dishonour of pre payments • Not explaining to tenant, the lease and their obligations • Not explaining Agency policy on arrears • Not explaining Agency policy on repairs • Not giving all required copies of documentation to tenant • Not giving tenant a full set of keys to the property 	



PROPERTY MANAGEMENT RISKS

Continued

POTENTIAL RISK AREAS	CAUSES OF POTENTIAL RISK	✓
Ongoing Property Management	<ul style="list-style-type: none"> • Inadequate/incorrect/incomplete/lack of ingoing condition report • Inadequate key security • Careless selection of Tradespeople • Failure to check trades people's credentials • Inadequate routine inspections • Careless or incomplete inspections • Inadequate maintenance routine • Failure to advise owner of breaches of lease • Inadequate tenant liaison • Inadequate landlord liaison • Late or non-payment of accounts • Inadequate insurance of property or landlord risk • Excessive vacancies • Not maximising returns • Inadequate reporting to owner • Inadequate record keeping • Failure to act or procrastination on tenant complaints • Inadequate minimisation of liability • Incorrect disposal of abandoned goods • Failure to organise repairs correctly • Failure to inspect repairs when completed • Failure to advise landlord and tenant that repairs are completed 	
Rent Collection and Disbursement	<ul style="list-style-type: none"> • Rent payments not made on time • Inadequate follow-up of arrears • Failure to inform owner of arrears • Failure to invoke the Agency's arrears procedure • Incorrect service of termination notices • Failure to account for funds correctly • Inadequate procedures for handling receipts/cash control • Infrequent reconciliation of funds held • Inadequate owner statements 	

This list is an indication of the risks and hazards in the Property Management area or agency business. From this you should have Policies and Procedures that cover all the functions performed in the Property Management area to ensure risk is minimised.



PROPERTY MANAGEMENT RISK

Set out below is a sample risk assessment of the risks involved with **undertaking rental market appraisals**. It identifies the hazard, risk and then the methods to be used to control them, then set out the training required of personnel in that area and identifies any residual risk. Risk assessments can be prepared for other areas of risk within the Property Management Department of an Agency.

SAMPLE RISK ASSESSMENT

Activity/Operation	Rental Appraisals
Hazards	<p>The marketing appraisals of the possible rental of the property results in a figure that may over-estimate or under-estimate the market rental of a property.</p> <p>In the situation of the market rental estimate being under-estimated and the owner relies on this, there is a likelihood of a damages action against the agency.</p> <p>In a situation of the market rental estimate being over-estimated, an action could be likely if there is an excessive length of time taken in locating a suitable tenant or the owner relied on the appraisal to incur additional liabilities.</p> <p>In all cases, even if there is no litigation, there is a very real possibility of adverse public relations.</p>
Risk	An incorrect figure or range is highly probable if the appraisal is conducted by an inexperienced person OR a person who does not follow office procedures.
Control Measures	<p>Thorough research into comparable rentals and market conditions by use of evidence sourced from information providers (e.g. RP data, APM, Residex, Red Square, REI), office files, newspapers and other agents. Additional confirmation by internal discussion and regular inspections of properties available for rent.</p> <p>All Market Rental Appraisals to be qualified by use of a standard disclaimer.</p> <p>Strict adherence to office Policies and Procedures.</p>
Training	<p>Any staff members conducting a Market Appraisal of the possible rental of a property is required to hold a Certificate of Registration of a Licence under the Property, Stock and Business Agents Act 2002.</p> <p>Property Managers will receive additional training and mentoring as part of their induction into <i>ABC Real Estate Limited</i>.</p> <p>Property Managers will receive ongoing training on a regular basis.</p>
Remaining Risk	Providing the above measures are implemented, the remaining risk is low. However, any incident that does occur may still have minor/moderate consequences.



IMPACTS OF RISKS

Having analysed the potential risks in the agency environment we can then set about to assess the impact of the risk. The impact can range from being extremely minor, such as loss of right to recover expenses, to more serious consequences of large fines or even loss of license. The ultimate impact could be bankruptcy or even loss of life.

CLASSIFICATION OF RISKS³⁵

While we can look at all the sources of risk, we need to have some system for classifying the risks we face otherwise we run the real risk of being swamped by the mountains of possible risk. In classifying risk, we need to be aware of how different risks will affect us in different ways and how each different risk has a different likelihood of occurring⁵. So we need a system to rank risk in terms of the likelihood of it occurring and then rank the risk in terms of its impact or negative affect upon us and/or our business.

To do this we develop a ranking system that takes both of the above elements into account. This way we can then rank risks as we identify them. This will enable us to establish just what we do with the risks e.g. if the risk has a high chance of happening, and its impact could be huge, we need to do something about it very quickly and put in place actions that will either remove the risk or reduce its impact. We must also keep in mind that risk arises through negligence, oversight as well as intent.

The first thing we need to do is establish what is the likelihood of any particular risk arising. We can do this by setting up a simple table that looks at the likelihood of the risk arising and then give it a rating.

Likelihood of Risk

Likelihood of Occurrence	Rating	Sales Example	Rental Example
Almost certain	1	Advertising incorrect	Tenant withdraws from application
Likely	2	Buyer rescinds contract	Tenant falls 14 days in arrears
Moderate	3	Vendor wants to cancel selling authority	Owners disputes outgoings charged
Unlikely	4	Purchaser rescinds unconditional contract	Large amount of \$\$\$ missing from Trust account
Rare	5	Vendor sues agency for negligence. Professional indemnity claim.	Tenant sues agency under public liability claim



So, if we looked at the sales example where the Vendor may want to cancel our selling authority, we would give it a moderate chance of occurring and it rate it a 3.

The next step to assess what would be the impact on the business or your employment if the risk arose. This is done in the Consequences and Impact Table below.

Consequences and Impact

Consequences of Occurrence	Rating	Sales Example	Rental Example
Extreme	5	Vendor sues agency for negligence. Professional indemnity claim.	Tenant sues agency under public liability claim
Very High	4	Purchaser rescinds unconditional contract	Large amount of \$\$\$ missing from Trust account
Medium	3	Vendor wants to cancel selling authority	Owners disputes outgoings charged
Low	2	Buyer rescinds contract	Tenant falls 14 days in arrears
Negligible	1	Advertising incorrect	Tenant withdraws from application

So, if we looked at the same risk of our vendor wanting to cancel our selling authority, we would rate the consequences of the risk occurring as medium and score it a 3.

Finally, we can bring the two tables together where we can score the risk on a scale that takes into account the likelihood and then the impact of the risk arising.

To do this, we simply multiply the Likelihood by the Impact. In our “cancelling of the selling authority” example, it would be $3 \times 3 = 9$ and thus it would earn a low to medium risk rating- needs monitoring and containment. (see the table below)

Score	Level of Risk
1-5	Low and probably acceptable
6-10	Low to medium – needs monitoring and containment
11-15	Medium – needs planning and containment
15-20	Medium to high – needs action and prevention
20-25	High – needs immediate action

When we are in business, we face risks from all sorts of areas and by identifying and then classifying these areas of risk we can then start to rank the various risks so we can deal with them in a timely and structured fashion.

Let's look at some risk areas that have been identified by the Office of Fair Trading and then rank them according to the table above. You may rank the risk from an Office point of view or a personal point of view. Be honest because by only doing



this exercise will you understand where you are in relation to identifying and then eliminating risk.

First, rate the likelihood of the risk occurring between 1-5 (as per the table on page 17) and then rate the consequences of that risk happening between 1-5, (as per the table on page 18) **then multiply them out to calculate your final score for each risk.**

The answer in the box will therefore be a number between 1 and 25

SELF ASSESSMENT RISK ANALYSIS TABLE

	Type of Risk	Office	Self
1.	Understanding of new PSA Act 2002 (23/3/2020)		
2.	Did not follow Policy and Procedure for smoke alarm inspections		
3.	Unlicensed or Unregistered staff member		
4.	Lack of authority when appointing tradesperson		
5.	Fail to inform a vendor of an offer		
6.	Inadequate knowledge of Trust accounting procedures		
7.	Failure to provide ingoing condition report to new tenant.		
8.	Poor research skills on Comparable Market analysis		
9.	Failure to attend to urgent water leak repair.		
10.	Failure to check facts against claims made by vendor		
11.	Failure to properly identify conflicts of interest when selling a vendor's property		
12.	Failure to follow written instructions by vendor		
13.	Failure to handle the question of price correctly at open home inspection.		
14.	Failure to keep proper written records of all attendees at an open home.		
15.	Pool gate does not lock securely at an open home inspection.		
16.	Failure of Licensee to regularly check Trust account reconciliations.		
17.	No "Exchange of Contracts" checklists are available		
18.	Angry tenant in office foyer has not had repairs carried out (conflict resolution skills)		

Having undertaken this exercise look at any rating that you have given that is **above 10**. You seriously need to deal with this problem NOW. If you don't then it is going to cause problems at some time in the future. When is anyone's guess, but it will cause a problem. If you can't fix or reduce the problem you need to refer it to someone else e.g. your manager or licensee in charge.

Those areas where you have given a rating between 6 and 10 also need to be addressed. While the risk of impact on you may not be great fixing them now will keep them under control.

Remember the final impact of any risk is either a financial or personal loss. The financial loss can arise from fines, loss of business or legal judgements against you for



damages or economic loss. The personal loss can be loss of reputation and loss of your preferred employment. Whatever the outcome, failure to identify and address risk means that you lose. The cards are stacked against you so it cannot be ignored.

IMPLEMENT POLICIES AND PROCEDURES TO MINIMISE RISK

Having identified and classified risk in your workplace you now need to put in strategies that will either eliminate risk or reduce it to a point that you minimise the chance of a severe impact on your business. Understanding what you have to do and then following means that you will keep yourself and your agency out of trouble. It is not an onerous task if it is done correctly.

OPTIONS FOR MINIMISING RISK 36

So what are your options? Basically, they are: -

- a. **Avoid all risk situations** – this requires a conscious decision not to become involved in any risk situation. Nice but impracticable in the world of business. We cannot wrap ourselves in cotton wool. Risk taking is part of life, as we know it.
- b. **Reduce the Risk** – this requires us to implement appropriate techniques and management principles to reduce the likelihood of risk situations arising, and if they do to minimise the impact
- c. **Transfer the risk** – we can shift the responsibility to where it belongs, or shift the responsibility to someone else by contract or through insuring the risk or other means
- d. **Retain the risk** – finally we can intentionally retain the risk and hence its consequences. We accept the responsibility of the risk and the burden of the financial loss

Of all the options (b) and (c) above are the most realistic ones we follow, and for those risks we cannot prevent or isolate, then finance the risk by insuring for its occurrence. We know that in the real world we cannot totally eliminate risk, so the core of any risk management policy should be to reduce it to a minimum and also to isolate the consequences should the risk arise.

While prevention rather than cure should be the backbone of any risk management strategy we need to identify and insure those risks that we cannot totally eliminate. So, while we reduce the chance of the risk, we also isolate the financial consequences should the risk occur?



KNOW THE ACT

One of the basic strategies for risk management for Agents is to know and understand the requirements of the Property & Stock Agents Act 2002 and the Regulations 2003. This in itself is a risk management strategy. Every staff member should always do their compulsory annual CPD training so that they can stay up to date with any changes in legislation. This in itself is a great risk management strategy because if you comply with the requirements of the Act in every respect then the chances of a risk occurring is greatly reduced.

Further, making sure that all staff are fully educated ensures they understand the risk environment and the importance of risk management strategies.

Specifically, education requires that the following risk management strategies be implemented: -

- I. There is a **Policies and procedures Manual** in the Office covering all aspects of work that the Agency undertakes. Further, all staff are conversant with those Policies and Procedures
- II. Have job descriptions for all duties that are carried out in the Office
- III. Have delegation structure in place and ensure that all staff are aware of the limitations of their authority
- IV. Ensure that all staff members are aware of their obligation to comply with all laws and regulations

In particular the above should include: -

- I. Daily duty statements for all employee's
- II. Delegation of powers in writing
- III. Limitations of Agents authority in writing as regards to Agency Agreements, exchanging contracts and powers to commit the agency to expenditures
- IV. Limitations on expenditure that staff can commit the agency to.
- V. A requirement for all staff to suitably document their actions.
- VI. Set out procedures for the handling of any complaints made to or about a staff member.

In the end, the secret to risk management relies in document systems, policies and procedures that govern all the day-to-day operations of your business.



Your business needs:

- Written Policy and Procedures Manual (responsibility of your Licensee in charge)
- Checklists for everything that is done in the Office
- Standard letters to cover all the routine correspondence
- Written job statements of all positions that set down duties and the limit of employee's delegated powers
- A training regime that ensures that all staff are properly trained for the duties that they undertake, and that the training keeps them up to date
- Ensure that all staff has the resources they need to complete their duties
- Instil in staff that "knowledge is power"
- Have staff exceed clients' expectations rather than just meeting them
- Instil the culture of excellence in service

If these rules are followed you will find that you have the mental approach that ensures that you meet your legal and moral obligations in business. Such attitudes ensure that you are attuned to what the public wants and meet that expectation. The chances of being sued or prosecuted is greatly diminished.

Risk Management strategies for staff would include: -

- Do not act beyond your written duties or authority without authorisation
- Do not breach the Offices Policies and Procedures
- Make sure you have all the facts. Act with discretion not haste
- Act as an expert and remain in control. Do not be pressured by clients or customers
- Do not make assumptions. If you don't know the answer, say so but offer to get the information
- When in doubt seek assistance
- Double check all documents to ensure they are correct
- If it is important, confirm it in writing. Make sure you keep diary and file notes on all transactions. What is in writing usurps memory.
- Avoid making extravagant claims
- Carry out proper research before you commit pen to paper or make verbal claims
- Check all facts against original sources if you can
- Put "disclaimers" on everything
- Do not offer advice you are not qualified to give
- Do not give "Guarantees" unless they relate to something you fully control
- Never guess the answer – get the facts then answer
- If you are challenged, find out what the problem is and deal with it
- If concerns arise seek help from your superiors, legal advisors or your professional indemnity insurer
- Do not ignore problems-deal with them....that is the only way to solve them



Acting like a professional build's confidence in both your current and potential clients. When you make representations that are later proved to be false or misleading this undermines any confidence you may have built up.

Prospective clients or current customers prefer to deal with people who handle their enquiry or concern with care, showing you care may mean not having all the answers immediately or not having the answer your customer may want to hear.

Build confidence early in any business relationship. You can draw on this confidence later when you may have to ask your client or customer to do something for you.

Following the above will go a long way to keeping you out of trouble and help to build your good name in the local real estate community.

INSURANCE

The second way to minimise the impact of risk on the business is to take out insurance in order to minimise the financial impact on the business of adverse consequences of risk happening.

Types of Insurance 37 & 38

Insurance coverage would include but not necessarily be limited to the following:

1. Comprehensive Business Insurance, which includes
 - a. Theft
 - b. Hold up
 - c. Building Insurance
 - d. Glass
 - e. Fire
 - f. Business interruption
 - g. Recreation of records
 - h. Loss of money
2. Compulsory insurance including
 - a. Public Liability – need to take the maximum amount
 - b. Workers compensation (by law) covering employees who are injured whilst at work 37
 - c. Professional indemnity 38 (need to fully cover the risk in case of negligence or malpractice). Mandatory for all agencies under the PSA Act 2002.
3. Other insurance.
 - a. Landlords rental insurance
 - b. Tenants contents insurance



While it is not the intention of any business operator to claim on insurance, each proprietor should ensure that the insurance they take out is adequate to cover the risk. This is particularly so with professional indemnity. The amount of cover taken should reflect the size of the risks you encounter in your business. If you deal in multi-million dollar properties, then taking out the bare minimum would not provide you with sufficient coverage if something went wrong

Premiums and Claims and Problems of Under Insurance

It is important that all premiums are paid on time, as that is a condition of all insurance policies. If you pay a premium late you may not be insured even though your premium is accepted. If you should pay your premium late, even though the insurance company accepts the payment, they are at liberty to refuse any claim you make during that insurance year, merely by giving you back the late premium. If you are making a late payment, get specific acceptance from the insurance company at any time of payment that they have accepted the late payment.

If you are going to make a claim on your insurance, then make sure that the claim is lodged in a timely manner. Most policies require the insurer to notify the insurance company immediately that they are aware that there could be a claim. If you don't then the insurance company have grounds not to pay any claim you make.

ONGOING MONITORING & REPORTING SYSTEMS

REASONS FOR MONITORING THE RISK ENVIRONMENT

Establishing what risks you face at any one point in time is only one part of the process. One has to continually monitor the risk environment and ensure that the minimisation policies that are in place are kept up to date. Changing circumstances can lead to a change in risk and all must be kept abreast of those changes.

There needs to be a reporting and review systems in place to ensure risk is kept under control. Policies and Procedures need to be reviewed on a regular basis to ensure that they cover the risk environment adequately, and changed when new risks arise or old risks change.

An eye needs to be kept on changing industry standards as well. A recording of these changes helps in the analysing of potential risks and new risks and ensures that your risk management policies stay abreast of developments.

HOW TO MONITOR THE RISK ENVIRONMENT 39

Monitoring the risk environment involves ensuring that the systems that have been put in place are being followed. It involves auditing employee's actions to ensure



they follow the instructions they have been given. Monitoring also involves keeping an eye out for changes in legislation that affect the running of the business and also changes in the interpretation of the law. It is a never-ending process and must be followed to minimise the occurrence of risk and its consequences.

REPORTING BREACHES IN THE RISK ENVIRONMENT

It becomes important that even though you monitor the risk environment there needs to be a system in place to report any breaches.

Breaches can then be reviewed to ensure that they are not likely to happen again and action can then be taken to mitigate any impact from the breach.

Remedying the breach to ensure that the chances of it happening again are lessened.

ASSESS RISKS/ THREATS TO LIKE ORGANISATIONS

One way to identify risk is to look at the operations of like organisations. By doing this you can gather information on the types of risks they face and how they handle them. This can provide lessons for your own organisation. Care should be taken to look at the precautionary actions that like businesses take, as it will give you an idea of what you should be doing in your own business.

RECORDING AND ANALYSING RISK INFORMATION

All well run businesses should have a system for recording events in the risk environment as soon as they happen. The recording should be done in enough detail so that the cause of the risk identified is found. This way an analysis of the records will enable managers to institute policies to mitigate or eliminate the consequences of the risk. Learning from past mistakes and taking action to ensure the problem does not arise again, ensures that the business is protected as far as it can be from the catastrophic consequences that can arise.

REMEDYING POTENTIAL RISKS

In the business environment there is a need to recognise that the risk environment is forever changing and there needs to be an awareness of the need to formulate remedies that meet the chance of potential risks arising.



RISK MANAGEMENT ISSUES IN REAL ESTATE

We have looked at Risk Management issues in general terms; so now let us focus on the major risks we face in a real estate office.

Firstly, we have to be mindful of the legislation that governs our day-to-day operations and ensure that we do not breach that legislation. The main Acts that we need to be aware of are: -

1. Property & Stock agents Act 2002 and Regulations 2003 ⁴⁰
2. Fair Trading Act 1987 and Fair Trading Regulations 2019
3. Contract Review Act 1980 –
4. The Privacy and Personal Information Protection Act 1998 (PPIP Act)
5. Anti-Discrimination Act 1977 (NSW)
6. Corporations Act 2001
7. Strata Schemes Management Act 2015
8. Conveyancing Act 1919
9. Business Names Act 2002
10. Financial Transactions Report Act 1988
11. Real Estate Industry Award 2010
12. Clerical & administrative State Award 2006
13. Valuers Registration Act 1975
14. Retirement Villages Act 1999
15. The Work Health and Safety Act 2011
16. The Retail Leases Act 1994
17. Residential Tenancies Act 2010 and Regulations 2019

Compliance with all these Acts is most important. The main cost of breaches may not be the fines imposed but rather the civil actions for damages and economic loss. All staff has a responsibility to ensure that they comply with the legislation that governs the industry. Under the Property & Stock Agents Act 2002 and the Regulations all licensed and Certificated staff have an obligation to meet the requirements of the Act and can be prosecuted individually for any breaches. If it is shown that the principal or licensee of the business did not supervise the staff correctly, and did not have suitable policies and procedures in place they can be prosecuted as well for the same offence.

GENERAL

In the first instance all staff should be conversant with the Fair Trading's requirements when it comes to licensing and certificate of registration matters. This includes the requirements for Continual Professional Development training that must be undertaken each year to enable application to renew their license. Certificate of registration holders (now known as assistant agents) must continue to study to



become fully licensed agents as part of their ongoing professional development requirements. All Agents now have the option to take out 1,3 or 5 year licenses, but this does not negate their responsibility to train annually. Fair Trading randomly audit agents to ensure compliance with these requirements.

All Licensed and Certificated staff need to be aware that they must fully comply with the Rules of Conduct application for their class of license or certificate. It would be risk management for all staff to have a copy of their respective Rules of Conduct in their diary so that they ensure they do not breach them at any time.

SUPERVISION

The Property & Stock Agents Act Section 32(3) requires all Licensees to supervise their employees in the business. Further, the Act requires Licensees to have established procedures to ensure that staff complies with the Act and other relevant laws, and to monitor the staff to ensure that they comply with these established procedures.

The Commissioner has set down guidelines that form the minimum required for written Policies and Procedures in real estate office. The Guidelines are available from the Fair Trading NSW website are mandatory for all Licensees from 23/3/2020.

https://www.fairtrading.nsw.gov.au/_data/assets/pdf_file/0015/601233/Secretarys-Guidelines-for-the-Proper-Supervision-of-the-Business-of-a-Licensee.pdf

However, Licensees should not see these requirements as an imposition. Best Practice also required that there are written job descriptions for all jobs and duties carried out within the work place. While this may take time to set up and implement, it is essential risk management strategy as it can protect the business against an action, especially if an employee has breached the procedures that are set down that they must follow. A set of Policies and Procedures can be produced as evidence of what happens in particular instances and this can become a very effective defence in court. If a written Policy and Procedure covering a particular event exists it means that if a member of the public takes an action against the Agency the onus of proof changes when the Policy and Procedure is produced as the plaintiff has to prove that the Policy or Procedure was not followed.

So Licensees should implement the following 41:

1. A "Policies and Procedures" manual for the Office that covers all areas of the Agency Operations and Duties and functions performed by all staff
2. Duty statements for all positions in the agency which not only included the duties and responsibilities that go with each position but sets down the limits of those duties and responsibilities
3. Written Procedures and checklists that conform with the Requirements of the Commissioner



4. Clear instructions on who is in charge of the office when the Principal is absent and the procedures they must follow if any problems arise in the absence of the principal

The Policy and Procedures Manual therefore should cover all the areas where staff are dealing with the public.

RESPONSIBILITIES OF ALL LICENSED / CERTIFICATE STAFF

The Various Acts set out on page 8 put particular responsibilities not only on Licensees but all staff that work in a real estate office. You need to be aware of these responsibilities and ensure that you comply not only with the laws but also with the written policies and procedures of your office.

We will now deal with the main areas: -

CONFLICTS OF INTEREST (Property & Stock Agents Regulations 2014 Schedule 1 General Rules of Conduct Clause No 11)

Agents need to be particularly aware that, if in taking on the agency to sell or manage a property, there will be a conflict of interest or a likely conflict of interest then under Rule 11 of the Rules of Conduct they cannot accept the work.

So before listing a property Agents must be careful to ensure they have identified any possible conflicts and address those issues before listing the property.

REFERRALS ⁴² (Section 47 of PSA Act 2002)

If any Licensed or Certificated staff member refers a member of the public to a service provider and there is a personal, business or fiduciary relationship between the Agent (i.e. the employer or the staff member) and the service provider then they MUST complete a Section 47 certificate and the person they are referring then signs the certificate to acknowledge the relationship.

https://www.fairtrading.nsw.gov.au/_data/assets/pdf_file/0010/367867/psbasection47form.pdf

Failure to do so will lead to possible fines of \$22,000 for the Corporation and \$11,000 for the individual.

Agents in particular should be aware that a referral to another Agent, even within their own group, is covered by this clause.



BENEFICIAL INTERESTS ⁴² (Section 49 of PSA Act 2002)

If an Agent or any member of an agency or employee wishes to purchase an interest in a property listed for sale in the Agency they work for, then a Section 49 Certificate.

https://www.fairtrading.nsw.gov.au/_data/assets/pdf_file/0011/367868/psbasection49form.pdf

This form has to be completed and signed by the Vendor before the exchange of contracts. Such Section 49 certificate must be kept on the sale file. Failure to do this leads to a maximum penalty of 2 years in jail and/or \$22,000 fine for the Corporation and \$11,000 for the individual.

FINANCIAL ADVICE ⁴² (Section 46)

During the Course of business an Agent provides financial or investment advice to a person in connection with a sale or purchase then they must provide to the person warning specified in the regulations (Section 46, Clause 10). The statement must take the form of: -

- (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. 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
- (b) Information that discloses the existence of 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)

AGENCY AGREEMENTS ⁴² (Section 55)

The Property, Stock and Business Agents Act 2002 (the Act) states that an Agent cannot claim commission or expenses from any person unless there is a valid written Agency Agreement in place that sets out the terms and conditions under which commission and expenses can be charged. If the Agency Agreement is found to be defective the Agent loses all their legal rights to be able to claim commission or expenses. Therefore it is most important that Agency Agreements are filled out correctly.



For a Licensee to be entitled to any commission or expenses then the following MUST have occurred:

- a. The services were performed under an agreement between the Agent and the principal which has been made in writing, and signed for or on behalf of the principal and the Licensee
- b. The Agency Agreement entered into complies with all the requirements of the Act and the regulations
- c. A copy of the executed agreement entered into is served upon the principal within 48 hours of that person signing it. (certain cases may arise that give leniency to this Clause)

Several points must be made here about your Agency Agreements: -

1. The Act lays down prescribed clauses that must be included in the Agreements. Because of this it is highly recommended that Agents use commercially available forms so that they are sure that all requirements of the Act and Regulations are met. Because of the nature of these clauses Agents should not attempt to write their own agreements unless they obtain excellent legal advice
2. The Act allows Agency Agreements to be signed for and on behalf of the Licensee. It is strongly recommended that Office principals have written procedures in place that sets down who can sign Agency Agreements and delegates that power to them
3. Care should be taken when filling out Agency Agreements to ensure that the Licensees name is correct. Many Agents are doing this incorrectly. The Act requires that the agreement be in the **Principal Licensees** name, that is, the **legal name of the licensed business owner** who holds the licence to trade, not their business name or the name of an employee. So if the Principal Licensee is a Company and has been granted a Corporation license, the name and license number on the Agency form is the name of the **licensed company**, not that of the "Licensee in charge"⁴³ or a salesperson. If the Principal Licensee is a partnership then the Agency form must be in the name and license number of the licensed partners (companies included). If the Principal Licensee is a sole trader then the name of the individual who holds a personal Class 1 license is the name and license number on the Agency Agreements. In the case of a sole trader, an individual business owner is permitted to hold a Class 2 license but must employ a Class 1 license holder to take on the responsibilities of "Licensee in charge". The Class 1 license holder does not need to be an owner in the sole trader's business. The Class 1 license holder is therefore an employed "Licensee in charge".



The “Principal licensee” must notify the Secretary of the name and licence number of each licensee in charge employed by them, including the address of each place of business at which each nominated licensee in charge will be discharging their duties.

The principal licensee must notify the Secretary within 5 business days of any changes in details of the licensees in charge.

Note: confusion can arise around the name “Licensee”. The “Principal Licensee” is the business owner and the “Licensee in charge” is the appointed Licensed agent that takes on the responsibility of overseeing compliance and is directly responsible to answer to Fair Trading on behalf of the business owner. If you hold a license, you are “License holder” not a Principal licensee or a “Licensee in charge”.

1. The Act allows the Corporation, partnership and the sole trader to delegate the power to sign to other Class 1 or Class 2 license holders but Certificate holders (Assistant Agents) are no longer allowed to enter into agency agreements on behalf of the business. Only Class 1 or Class 2 license holders now reserve this right (PSA Act Amendment Regulation 2019).

To ensure that the Agency form cannot be challenged all Agents should remember:⁴⁴

- i. An Agent MUST provide to the seller a copy of an approved consumer guide titled “Agency Agreements for the sale of residential land” (FTR 32).

https://www.fairtrading.nsw.gov.au/_data/assets/pdf_file/0003/382125/FTR32_Agency_agreements.pdf

- ii. This must be done no more than one month before the Agency Agreement is signed. Any Agent who fails to comply with this requirement faces a possible fine of up to \$4,400. It would also be good practice to have, as a standard clause in your Policies and Procedures manual words to the effect that all agency agreements are attached to the FTR 32 form at the time of signing by both vendor and agent. This can only enhance your position in the event of a dispute arising where a vendor claims no such guide was provided by the agent.
- iii. Agents filling in Agency Agreements should ensure that every blank space is filled in. Make sure everything on the Agency Agreement is clear and unambiguous. If a clause does not apply write the words “NIL” or “Not Applicable”. Do not use abbreviations.



- iv. Because of the requirements in the Act, but also the Trade Practices Act (now the Australian Consumer Legislation) and the Contract Review Act, Agents when entering into an agreement with a consumer, should go through the agreement and explain all the main clauses to the prospective seller before they sign. Failure to do this could lead to the agreement being challenged at a later time with the Vendor simply claiming they did not understand the agreement when they signed it. This is prudent practice to protect your right to claim commission and expenses if and when a dispute arises
2. The Act required that a copy of the executed Agency Agreement be served on the principal(s) within 48 hours of it being executed by the principal.⁴⁵ The copy should be served in person, or can be done by email but only with a first written authority from the vendor that such a document can be served in this manner. Do not post it, as by definition post takes more than 48 hours. This clause relates to all Agency Agreements and therefore includes commercial and industrial agreements as well.

Agents should be very conscious of the 48-hour rule. In a recent case, *Terry Pfeiffer vs. Connors (2000)* in the New South Wales Supreme Court a Vendor was able to reclaim his full commission plus expenses because the Agent could not show that they had delivered a copy of the agreement to the Vendor within the 48-hour period.

REBATES, DISCOUNTS & COMMISSIONS (SECTION 57)

Section 57 of the Act requires a Licensee to declare and identify all rebates, discounts or commissions that the Licensee will or may receive in respect of those expenses. If the principal is not notified of the rebates, discounts or commissions at the time of signing the Agency Agreement, then the Agent cannot recover them from the principal. If they are recovered without disclosure then the Agent will have to return them if so ordered by the Office of Fair Trading at a later date. This section also requires the Agent to specify in the disclosure the estimated amount of such rebates, discounts and commissions.

DISCLOSURES IN ADVERTISEMENTS (SECTION 50)

If a Licensee is selling land or other property in which they have an interest (for example they own it or have part ownership in it), the interest must be disclosed in any advertisement published in connection with the property. This would include all newspaper advertisements, brochures and the internet.



TRUE ESTIMATE OF SELLING PRICE (SECTION 72 & 73)

When listing a property for sale, sales Agents are required to supply the Vendor an estimate of their view of the likely selling price of the property (your "True Estimate"). Further the Agent must be able to substantiate how they arrived at their estimate, if called upon to do so by the Office of Fair Trading. It is a requirement that selling

Agents must be fully conversant with the requirement of the Office of Fair Trading in relation to the Estimate they make of the likely Selling Price of a property.

Estimated Selling Price Guidelines for Agents

Section 72 of the *Property Stock and Business Agents Act 2002* prohibits an agent from making false representations with respect to the agent's True Estimate of the selling price of a property to either a seller or prospective seller of residential property.

Section 73 prohibits an agent, by any statement made in the course of marketing a property pursuant to an Agency Agreement for the sale of a residential property, falsely understating the estimated selling price of the property.

The effect of these provisions is to require agents to act reasonably and fairly in their dealings with sellers or prospective sellers of properties and with buyers or prospective buyers of properties.

Section 73 of the *Act* also contains some substantive considerations that agents need to be aware of which could trigger an offence:

- An agent or employee is considered to falsely understate the estimated selling price of residential property if the agent or employee states as his or her estimate of that selling price a price that is less than his or her True Estimate of that selling price.
- For the purposes of the section, a statement is considered to be made in the course of marketing residential property if the statement is made:
 - a) In an advertisement in respect of the property that is published or cause to be published by an agent, or
 - b) To a person (orally or in writing) as a prospective purchaser of the property.
- Section 75 of the *Act* extends the provisions of Sections 72 and 73 to estimated price range in the same way as it applies to estimate price.

A statement in the Agency Agreement of the agent's estimate of the selling price of residential property is evidence for the purposes of these sections of the agent's True Estimate of that selling price. Regulations to the *Act* required that both an



estimated price, and the price at which the property is to be offered for sale, must be recorded in the Agency Agreement.

The maximum penalty for a breach of the provisions of Sections 72 and 73 is 200 penalty units – presently \$22,000. The Commissioner for Fair Trading may also take disciplinary action against the agent.

What if the eventual sale price is substantially different from the estimated price?

The price at which a property ultimately sells will be a factor to be considered by Fair Trading in relation to the reasonableness of the agent's estimate.

However, it is not the only factor, and without more it is determinative of whether an agent's estimate was fair and reasonable.

The Office of Fair Trading recognises that a significant number of external factors can affect the final selling price. Prevailing economic conditions, interest rate movements, the level of interest in a specific property, the marketing program and method of sale used in a particular case and seasonal factors all play a part in determining the final selling price of a property.

But the situation is this: an agent must act fairly and reasonably in their dealings with buyers and sellers. When estimating a selling price they should do so in a manner that can be substantiated by the agent. An agent must not dishonestly tell a buyer or potential buyer one (lower) price and a seller or potential seller another (higher) price.

Good agents will be able to develop practices that ensure that they make fair estimated of a selling price and will be able to demonstrate what information they relied on to make their estimate. This is good practice for agents and good service for consumers.

The requirement to substantiate selling price estimates – residential property

Section 74 of the Act empowers the Commissioner for Fair Trading to require an agent to substantiate any statements made by an agent with respect to the selling price of a property.

The Commissioner may, be a notice in writing, require an agent to provide evidence of the reasonableness of any estimate of the selling price of residential property made by the agent in a statement.

The Act provides a maximum penalty of 200 penalty units – presently \$22,000 for failing to comply with such a notice.



Estimates of the selling price in a statement that would be affected by this provision include the following:

- (a) orally or in writing to a seller or prospective seller of the property, or
- (b) in an advertisement in respect of the property that is published or caused to be published by the agent, or
- (c) orally or in writing to a person as a prospective purchaser of the property

Likely scenarios where an estimated selling price could be given orally would include “open house” inspections; at auctions, prior to the commencement of the auction, and estimates given when an agent is attempting to sign up a prospective vendor to an Agency Agreement.

Agents need to be particularly alert in relation to the use of price guides in advertisements promoting the auction or sale of residential properties. Careful consideration should be given to the use of the following two styles:

Specified Range These advertisements display the anticipated property price as falling within a range, e.g. \$600,000 to \$650,000.

Non-specific Range These advertisements display the anticipated property price as falling within a low, mid or high range of a fixed dollar amount, e.g. Low \$500,000, or where the anticipated property price is shown as a fixed dollar amount followed by a plus sign, e.g. \$550,000+. Use extreme caution when using price ranges to promote a price guide to buyers.

Illegal Terms It is now illegal to use terms such as “offers over” or “offers above”

Representations such as these are taken to be estimated selling prices for the purposes of the legislation. Therefore, agents must be able to justify any price range if they use this form of advertisement. If a range is used, it must be **consistent with the agent’s estimated price recorded in the Agency Agreement**.

What does the Office of Fair Trading require of agents?

When an agent provides an estimated price they must be able to demonstrate that their estimate of the selling price of a property was reasonable in all the circumstances and that they took due regard of those matters that should be included in determining an estimated selling price.

Matters that should be considered when an agent is determining an estimated selling price include:

- Features of the property which would affect the value of the property in the market, such as recreational facilities or special architectural features.



- Future use of the property (such as zoning, rights of way, redevelopment, resumption by public authorities, historical preservation orders, covenants or restriction of user, development approvals).
- Market demand in the area.
- Sales of comparable properties.
- Likely level of demand for the particular property.
- Recent valuations of the property.
- The circumstances of the Vendors (are they under pressure to sell, how much time is available to develop a marketing plan, are they limited in terms of the way they wish to exhibit the property or in respect of their desired method of sale).
- Remember, new rules were introduced in 2016 making it illegal to display a range on an agency agreement in excess of 10% from the lowest recorded amount i.e. \$600-660,000 or \$1,200,000 to \$1,320,000 would be acceptable. However a range of \$1,000,000 to \$1,500,000 is unacceptable as it is outside the 10% rule and is illegal.⁴⁶ Penalties apply to agents who go outside the guidelines.
- Seasonal factors (does demand traditionally fall away or increase at the time of year the property is being marketed).
- Economic factors (the level of demand for property, whether interest rates on the move, whether the authorities warning about overheated markets).

Agents when determining the estimated selling price of a property should ensure that any information that is relied upon to determine the price is retained in the Sales File for the particular property. Agents should also ensure that any notes they made of their inquiries are also retained. A copy of the sales inspection report should also be retained on the file as it forms part of the Agency Agreement. This will ensure that if the Commissioner for Fair Trading requires an agent to substantiate the reasonableness of an estimated selling price, they will be able to do so quickly and with confidence.

Whilst an agent who provides an estimated selling price is responsible for its reasonableness, the licensee-in-charge of the agency is responsible for the supervision of all staff and their conduct. Licensees-in-charge must ensure that they have sufficient management and control mechanisms in place in the office to ensure that agents comply with the requirements of the Act.



These provisions are in addition to the general obligation on agents not to engage in misleading or deceptive conduct. Agents should particularly note the requirements of Sections 51 and 52 of the *Property & Stock Agents Act 2002* which address the publishing of false or misleading advertisements, and misrepresentations by licensees or registered persons.

Agents must also note the requirements placed upon them by the rules of conduct which are prescribed in the schedules to the *Property & Stock Agents Regulation*

2003. These rules must be observed in the course of the carrying on of business or the exercise of functions under a licence or certificate of registration.

These provisions, and others in the *Act* and regulations, extend the requirements in relation to estimated price to the sale and purchase process for rural and commercial transactions.

It is also important that Agents have on file written evidence of how they arrived at their True Estimate and when they prepared it. To protect themselves for prosecution Agents should have a format for recording all the relevant information on their files. They can then produce such information without delay as they so requested.

The modern data analysis sites such as RP Data and Australian Property monitors use a standard template to produce such reports but it is important that the agent does not simply rely on the computer to do all the work. The agent is still expected to apply a professional overview and judgement to the information provided. Agents cannot simply rely on the numbers the report generates.

During the marketing of the property Agents will glean information that may lead them to change their view of the likely Selling Price for a property. Such information could include, but not be limited to: -

- a. The reaction of buyers to the property
- b. More recent sales information as new sales are made in the vicinity
- c. Details of comparable properties that potential buyers are using
- d. Changing information on economic condition and the likely movement of interest rates
- e. Newspaper articles that may influence buyer's perception of price
- f. Changing circumstances of the Vendor
- g. Any other information that may impact on the likely selling price

If any information comes to light during the sales process that could have an impact on your estimate of selling price then this information must be recorded on the respective sales file with enough detail so that the reason for a change in the True Estimate is obvious.



If you change your True Estimate, then full details of the reasons for the change, evidence of new comparable sales used to arrive at the New True Estimate, and the “new” True estimate, must be conveyed to the Vendor in writing, and a copy of that letter kept on the file.

Remember if the Office of Fair Trading investigates as a result of a complaint, they will require you to substantiate your original True Estimate and then the reasons for any change. That evidence **MUST** be placed on the sales file at the time you make your estimate and or any change in it. 47

If at any time you give information on price that is your opinion, or could be construed as your opinion, then you must give the person a price or price range that falls **INSIDE the estimate selling price you put on the Agency Agreement (or in a letter to the Vendor if you have changed it)**. If you quote a figure to buyers that is **BELOW** that estimate, you have committed an offence, (Underquoting) which could lead to a maximum fine of \$11,000 payable by you and a further maximum fine of \$22,000 against the Corporation under the Property, Stock and Business Agents Act.

Agents are reminded that it is a condition of service that they abide by these rules and no deviation from them will be tolerated under any circumstances.

If the property is listed with no asking price, i.e. by Auction, or by Negotiation, or Price Range Selling, then Agents should be very careful, in any discussion regarding price with potential Purchasers. Agents should take great care that they do not give opinions or imply a possible selling price that falls below the True Estimate given to the Vendor in writing. Reference should be made to the OFT guide as to terminology that should not be used.

Further, in this type of selling, once a Vendor has rejected an offer, even if it is above the bottom of your True Estimate range, you cannot quote or give the impression to prospective purchases that offers below the rejected figure will be considered, unless the Vendor changes their mind and has conveyed that change to you in writing.

If the Vendor, in answer to an offer, counter offers with a bottom price they will not consider offers below, then the Agent **MUST NOT** indicate to any prospective buyer after that time that they may be able to purchase the property for a lesser figure, irrespective what is in their “True Estimate of selling price”. This issue is covered further under the section on the Trade Practices Act.

Agents should be aware that the Office of Fair Trading is targeting breaches under these two sections of the Act. An Agent at Lane Cove has been fined a total of \$14,900 because she quoted a figure of likely selling price range to buyers that were below the figure of her True Estimate that she put on the Agency Agreement.



CONTRACTS FOR SALE (SECTION 63)

As mentioned above, Section 63 of the Property & Stock Agents Act 2002 ("the Act") requires that an Agent before they offer a property for sale of residential land must hold the required documents so that they are available for inspection at the real estate Agent's registered office by a prospective Purchaser or Agent of the prospective Purchaser at all times at which an offer to purchase that property may be made.

Residential land is defined as including: -

- Land on which the constructions of a single dwelling is not prohibited
- Land on which is situated not more than two residential dwellings
- A single Strata Title lot

Residential land does not include: -

- Land which is used solely for non-residential purposes
- Land that is more than 20 hectares in size (49 acres) (Stock & Station agents license required)
- Note that if the land has mixed use, such as a residence and a shop then you require to hold a contract before marketing the property

The Conveyancing Act 1919 sets down the required documents, which in essence is a contract for sale. It would be prudent for Agents to have a procedure to check every sale contract that comes into the office before marketing commences and to ensure that it is complete and includes all the required documents. The fine for using a contract that is not complete is up to \$11,000 for each offence, but at worst, if an Agent exchanged a contract that was not complete the Purchaser then can withdraw for the contract up till the time of settlement.

SO WHAT IS A COMPLETE CONTRACT?

The Conveyancing Act requires the following documents to be attached to the standard form of contract:

- Certificate of title
- A plan of the land either the deposited plan or strata plan.
- Current Section 149(2) Certificate (now known as a 10.7 Certificate) issued under the Environmental Planning and Assessment Act 1979 from the relevant local authority. A Section 149(5) could also be included but it is not a mandatory document
- A current sewer Diagram which may include a sewer reference sheet



- A copy of instrument lodged or registered with the Registrar General's Office which creates or purports to create an easement, profit a pendre, restriction on use or positive covenant burdening or benefiting the land
- Where land is burdened by a positive covenant, a certificate under Section 86G of the Conveyancing Act 1919
- If strata: any documents registered at LPMA (Land and Property Management Authority) formally LPI (Lands and Property Information) or Land Titles office (now privatised).with respect to it (such as change of by-laws), copy of the strata plan, by-laws and certificate for the lot as well as the common property, strata development contract/statement (if any), strata management statement in force at the time (if any), documents relating to the community, precinct or neighbourhood scheme (if any), building management statement (if any)
- A Notice (in the prescribed form) with respect to smoke alarms and swimming pools

The procedure for checking contracts is as follows. First, print the contract as they usually arrive in a pdf format via email from the vendors solicitor or conveyancer, then:

- a. Check that all the relevant documents are attached and are current e.g. if the 149 certificate (10.7 Certificate) is more than 3 months old you could ring the solicitor and check that he is happy with it. Also check the sewer diagram it may not represent what is on the land now, especially if the property has been rebuilt or remodelled in the last couple of years
- b. Check that the Vendor's name on the contract is the same as on your Agency Agreement. If it is not you may need to re sign your Agency Agreement
- c. Check that the description of the property is the same as on your Agency Agreement
- d. Check that the agency details are correct and the same as appearing on the Agency Agreement **48**
- e. Check whether or not there is a residential lease in place. If the fixed term is still in place then the details of the lease must be included in the contract. Where the lease has expired and the tenants are on a "month to month" basis and the property is sold "vacant possession" then a copy of the lease is not required but it is usual practice to supply a copy of the lease to the solicitor acting for the vendor so that it can be annexed to the contract in the event that a purchaser is found who wishes to retain the current tenant. Should a purchaser be found who wishes to purchase the property vacant, then the lease and all references to the tenancy can be removed from the contract and the tenants given the appropriate vacating notice from unconditional exchange of contracts.
- f. Check any special conditions. If you are unsure regarding the meaning or impact of any of the special conditions contact the Vendors solicitor or conveyancer for clarification



Make a copy of the contract and keep the original one in the sale file. If the contract is copied it must be checked that all the pages are there. This is especially so if a copy of the contract is handed out to any interested parties, at an open home, for example.

If any advertisements have been written they should be checked to ensure any details in them reflects what is in the contract. For example, land size and inclusions/exclusions. If land size is quoted, then the land size shown on the plan of the land in the contract should be used, along with the necessary disclaimer.

Agents should keep in mind that advertising or promoting the property includes: -

- Indicating it is for sale or may be auctioned at a future time by advertising or promoting the property in any way or indicating that it may be coming up for sale
- Placing a sign at or near the property indicating it is or may be for sale
- Advertising or in any way giving notice that the property may be auctioned at a future time. This includes signs on the property, the internet or even telling a prospective buyer that the property is coming up for sale and indicating where it is

EXCHANGING CONTRACTS (SECTION 64)

Section 64(1) of the Act allows the Agents to fill in certain particulars on a contract for sale and participate in the exchange of contracts, unless they have been advised that one or other of the parties' solicitors are going to do the exchange.

If you as an Agent are going to exchange contracts then the only particulars you are allowed to add or change on the contract are: -

1. The Purchaser's name and address
2. The Purchaser's solicitors/conveyancers name and address
3. The Purchase price.
4. Insert or delete any description of furnishings or chattels that are to be included in the sale and note any exclusions.

Care should be taken when filling in the front page of a contract to ensure you record all the Purchaser's details correctly. Further if you are adding any inclusions, then make sure that they are only recorded within the heavy black box on the front page of the contract. Do not under any circumstances go outside the heavy black box. Further, make no other changes to the contract or any information that is outside the heavy black box. This includes the settlement period. **If you wish to make other changes you must first obtain written permission from the respective Vendors and Purchasers and have this confirmed in writing by both parties prior to exchanging contracts.**



If an Agent is going to exchange contract it is very important that they have written permission to do so from the Vendor and or the Vendor's solicitor. This is a requirement of Section 64(2) of the Act. Further under Clause 9 of Schedule 2 of the Regulations, an Agent who participates in an exchange of contracts must serve a copy of the contract within 2 business days to either party or their solicitor.

Agents should be very careful when exchanging contracts as Section 64(3) makes them fully liable for any loss, damage or expense suffered as a result of their negligence, omission or unauthorised action. To help protect themselves, Agents should always have written authority from both Vendor and the purchasers authorising them to exchange contracts.

Agents should take special care not to accept a deposit less than the deposit specified by the Vendor's solicitor unless you have received written authority to vary the deposit. In other words, the deposit you request is always 10% of the sale price unless you have written authority to change it. In some instances, first home buyers may only have a 5% deposit and in some cases, investors may wish to pay no deposit at all but consideration will be by the way of a deposit bond.

Remember, that as Agents you are not expected to perform any legal functions. Also, the Conveyancing Act does not allow you to give advice to Vendors or Purchasers. If you do you are acting outside your authority and could be held liable for the full loss a party suffers who relies on your advice. It is always important to stress to Vendors and Purchasers that they need to obtain their own independent legal advice on any matter in the contract.

AUCTIONS

While most Agents who undertake auctions are aware of their responsibilities, several points need to be reinforced.

1. A copy of the terms and conditions of an auction sale and the prescribed warning notices MUST be on display at all auctions of property where the auction is being held
2. For residential auctions all bidders must be registered to bid and display an identification number when bidding
3. For a person to be registered they must produce a prescribed form of identification at the time they are given a bidding number
4. Auctioneers can only take bids from registered parties who display their bidding numbers each and every time they bid.⁴⁹

Further information on auction requirements, including checklists etc is available by going to the OFT website.

<https://www.fairtrading.nsw.gov.au/housing-and-property/property-professionals/working-as-a-property-agent/auction-laws-and-conditions>



PROPERTY MANAGEMENT SPECIFIC ISSUES

As in the sales area property managers need to be particularly careful when making claims to both owners and tenants. As in the Sales area Property Managers are liable for everything they do and say.

The area of Property Management is a very sensitive one and by far generates the most complaints from the general public. That is not to mean that Property Management personnel are negligent or incompetent, but rather that the issues involved in Property Management are very sensitive. In all cases in the end it involves money, so good risk management policies are essential.

The two main areas that generate the main complaints are arrears and repairs and maintenance.

ARREARS

The way an agency handles the question of arrears is crucial to its success in the area of Property Management. Because of time lags involved in getting matters to the tribunal it is important that agencies have a clear policy in relation to arrears. In order to lessen complaints, agencies should make both tenants and owners fully aware of what their areas policies are at the beginning of a lease. Such policy should be given to both parties in writing. It is important that you spell out to the tenant just what will happen if they fall into arrears and how you will handle the matter with them. Some Agents have been accused of harassment for ringing the tenant when they are seriously in arrears. By making the tenant aware early in the transaction of what happens, makes it harder for them to mount such a claim as long as the policy is adhered to. Increasingly owners are complaining to the OFT when tenants are falling into arrears and the OFT is investigating such complaints. By making owners aware of your policies again you lessen the likelihood of such complaints, and even if they do as long as you have followed your procedures you have a defence to the accusation.

REPAIRS AND MAINTENANCE

The second area that has to be addressed is the question of repairs and maintenance. When an Agency takes on the management of a property, the Agent takes on the responsibilities of the owner in the areas where they have been charged with the management.

So it is important that the Agency has a properly formulated policy on how the agency handles Repairs and maintenance issues and that the owner is aware of such policy at the beginning of the management agreement. This in itself is a "risk



management exercise" and provides clear guidance to staff on how to respond in the event of any unforeseen events arising.

Such policy should not only address the question of repairs and maintenance that the tenant requests but also address the issue of regular repairs and maintenance issues that could arise in the foreseeable future. This is called "preventative maintenance" and is something that your landlord would expect of you as a professional property agent.⁵⁰ For example, the issue of overhanging trees. It is no good waiting until the problem arises and then doing something about it.

Agents need to foresee problems that are easily identifiable and prepare the owner prior to the event happening.

Property Managers should refer to the below for further information on how to handle repairs and maintenance issues. This is another area where the Agent needs to be PRO ACTIVE rather than REACTIVE.

Repairs and maintenance – Procedures

General

Clause 13 of Schedule 2 states

- (1) An Agent managing a rental property must promptly respond to and, subject to the principal's instructions, attend to all requested 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."

It is prudent for an Agent to give all notices to the owner in writing. If an owner refused to approve a repair that you consider is necessary then that could mean that the landlord is in breach of the tenancy agreement. If this could be so then you must further advise the landlord of this in writing. Please keep in mind that even though you do this, a tenant could still make a claim against you if it could be shown that you could have reasonably be expected to foresee the failure to repair could cause risk or injury.

Property Managers should have written procedures in place to cover all repairs and maintenance issues. They should keep proper and full written records as to all requests for repairs and maintenance made by the tenant and details of what they did to organise them for a managed property. The records would include time and date of all written requests for repairs, the action taken to organise the same, and the completion of the work. Further it is incumbent on property managers to only use reliable and where necessary properly licensed trades people. If you have a computerised system then you should record all action taken in regard to repairs and maintenance in the note facility.



In summary, Best Practice for repairs and maintenance would dictate the following:

1. Use only reliable and licensed trades people. Sight a copy of their current insurance, and obtain their ABN.
2. Check the Fair Trading register to ensure that licensed trades people's license is current.
3. Create a Maintenance and Repair Register. Where possible if repairs are not urgent, have the tenant put, in writing, the nature of the repair.
4. Have written procedure on how repairs are entered in the register.
5. Ensure all requests for repairs are entered in the register.
6. Established urgency and priority of each repair. If unsure about the nature of the repair you may need to visit the property prior to instructing the tradesperson.
7. If within authorised limit, order repair in writing and record action.
8. If over limit, record time and date of notification to landlord, and landlord's subsequent instructions. Continue communication with all parties until the issue has been satisfactorily attended too.
9. Order repair with tradesperson in writing, or confirm verbal order in writing.
10. Diarise follow up date then follow up and ensure repair completed ⁵¹
11. Write to the landlord and tenant to confirm the repair has been completed.

When notifying the tradesperson of need of repair record:

- a. Date of instructions.
- b. Address of property.
- c. Landlords name.
- d. Tenants name and contact number.
- e. Full details of work to be completed and also whether it is urgent or non-urgent.
- f. If applicable the cost limit of the repair.
- g. Confirm access arrangements.

“Urgent” or Emergency Repairs

It would be good business practice for your office to have a written policy and procedure to cover “urgent” or emergency repairs. This policy would set out clearly just what is an emergency repair and the procedures as to how each emergency repair is handled. This is most important to ensure that even when a landlord cannot be contacted that the urgent repair is dealt with in a timely manner. Failure to do so or the leaving of an “urgent repair” that then cause injury or economic loss could lead to an action against the agent, by the tenant, the landlord or both.

The Residential Tenancy Act 2010 sets down what are “urgent” or emergency repairs:

<https://www.fairtrading.nsw.gov.au/housing-and-property/renting/during-a-tenancy/repairs,-maintenance-and-damage>



They include but are not limited to the following: -

“Urgent repairs” means any work needed to repair any one or more the following: -

- (a) a burst hot water service,
- (b) a blocked or broken lavatory system,
- (c) a serious roof leak,
- (d) a gas leak,
- (e) a dangerous electrical fault,
- (f) flooding or serious flood damage,
- (g) serious storm or fire damage,
- (h) a failure or breakdown of the gas, electricity or water supply to the residential premises,
- (i) a failure or breakdown of any essential service on the residential premises for hot water, cooking, heating or laundering,
- (j) any fault or damage that causes the residential premises to be unsafe or insecure,
- (k) any other prescribed damage,

Please note that there is no duty on the landlord to have repairs done unless the landlord is made aware of the need or the need for the repair would be obvious at a normal routine inspection. Clause 14 of the Regulations requires an Agent to inform the landlord in writing where there are any breaches of the tenancy agreement. So if an Agent notices any damage to the property during any inspection, then they should as a matter of course notify the landlord of the damage in writing and the need to have the damage rectified. This would further protect the Agent against actions by both the tenant and the landlord should a landlord not undertake the repairs recommended by the agent.

However, care should be exercised where Owners Corporations are involved. If the tenanted premises is managed by an owners corporation, and the repair is an Owners Corporation responsibility, the landlord still has a duty to ensure the repair is carried out, even if it is an Owners Corporation responsibility. In several cases ruling have been made confirming the principal that a landlord cannot hide behind an Owners Corporation failing to undertake a repair that was its responsibility. It is the Landlords responsibility to ensure that the Owners Corporation undertakes the work.

Agents should also be aware that NCAT (NSW Civil and Administrative Tribunal, formally the Consumer, Trader and Tenancy Tribunal) expects landlords to carry out repair work in anticipation of likely defects and just not wait for the failure to occur. The High Court has ruled previously that for a landlord to be sued they must first know about the defect and then have failed to act on the knowledge. If an Agent failed to notify the landlord then the Agent could be held liable. So when an Agent becomes aware of the need for repairs and maintenance they should notify the landlord in writing and seek the landlord's instructions in reply.



Monitoring Repairs

In terms of agent's responsibilities just arranging the repairs is not enough. Agents need to monitor the repairs that are being undertaken and then do a final check to ensure that the repairs have been completed satisfactorily. How an agent wishes to organise a final check is entirely up to them but once a repair is finalised a note should be made in the repair register to that effect and the landlord and tenant informed to confirm the completion. This ensures that if either party is not happy with the repairs, they have a chance to bring to your notice.

Repairs the Responsibility of Owners Corporations

Tenants are required to notify the managing agent as soon as practicable after any damage happens to the managed property, even though that damage may be to the property of the Owners Corporation. The Agent on behalf of the landlord then is obliged to establish who is responsible for the repair and to quickly advise the responsible party of the damage. If the damage is to property that is the responsibility of the Owners Corporation, then the Agent needs to notify the Owners Corporation immediately. The Agent is still obliged to follow up the Owners Corporation to ensure the work is done. If the work is not done by the Owners Corporation then the landlord can still be held liable if they have not taken reasonable steps to have the work undertaken. If the Landlord cannot resolve the problem with the Owners Corporation then application should be made to the Strata Titles Commissioner to get an order that the work be done. Only then has the owner taken all reasonable steps to effect the repair. Anything less could lead to them being in breach of the tenancy agreement.

Below is a list of items that would normally be considered Owners Corporation responsibility ⁵²

A) external to strata lot

- letterboxes
- Garage doors
- Foyer doors and locks
- Intercom systems
- Fly screen or security doors (if originally supplied)
- Entry door (fire rated)
- Intercom handset
- TV antenna
- A common hot water system
- Light fittings, light switches, exit lights, alarms, fire protection equipment etc. in or on the common property
- Main electrician switchboard
- Telephone distribution system
- Cable TV distribution
- Pool, spa, gym, community room and other sporting facilities



- Clothesline
- Garbage bin area but not garbage bins unless they are shared

B) internal to strata lot

- Shower glass (if original or covered by insurance policy)
- Shower tray membrane (but not tiling work or rectification of paint works)
- Toilet bowl (if covered by insurance policy)
- Shower tray
- Hot and cold water pipes that may be leaking inside external walls, ceiling and slab
- Electric cables inside external walls, ceiling and slab
- Floor and sewage pipes inside slab
- Ducting for range hood exhaust fans
- Other exhaust fans inside ceilings and walls

Landlords Liability 52

A) External

- Individual Garbage bin supplied by council
- Storeroom, if allocated to the strata lot
- Allocated car space and any other property allocated to the strata lot

B) Internal

- Entry and rear deadlock and window locks
- All internal fixtures and fittings including carpets, curtains, blinds, light fittings, power points, connection plates for TV and telephone, paintwork and gas fittings
- Paintwork to property inside the strata lot
- Individual hot water systems
- Split air conditioning, Microwave, oven cook top dishwasher, incinerator
- Ceiling fans
- Internal Alarm systems, smoke detectors within the strata lot
- Any contents and personal property inside an individual garage or allocated car space

Please note that strata insurance does not cover any items that are of the landlord's responsibility in the case of water, fire or smoke damage.

Insuring your landlords' risk:

In our litigious society and knowing all the potential risks associated with the management of an owner's property it would be fool hardy to take on the responsibility of management without first ensuring that the owner of the property first takes some of the risk off your shoulders.



There are various options for insuring the risk associated with Residential property management and various Insurance companies offer policies that will rectify many of the issues raised above.

Most policies offer (but are not limited too) ⁵³

- *Insuring the landlords' internal contents such as blinds, light fittings, carpets dishwashers, etc
- *Insuring the landlord for loss of rent or malicious damage caused by the tenant
- *Insuring the landlord for damage caused to another lot or property as a result of
- accidental damage caused by the insured's property e.g. burst hot water or faulty dishwasher.
- *Public liability for injuries or damage caused to an individual who sustains an injury whilst on the insured's premises.

However it is important as well to ensure that the tenant shares some of the risk whilst enjoying almost complete autonomy in respect of claims made against them. It is very rare to see a tenant being dragged through the courts for negligence or other serious breaches and in most cases, it is the tenant or lessee that usually pursues other parties for damages.

It is prudent to request that tenants have in place at all times some form of contents insurance to cover them against loss or damage from burglary or other incident that causes their goods to be damaged. Again, best practice suggests that the tenant, at signing the lease document, be given a policy brochure or notice requesting that contents insurance be taken out and that they sign some form of notice to show that you as the agent had brought such a policy to their attention, perhaps also signing a statement to the effect that they will have a policy in place within one week of their occupation of the rental premises.

Agents cannot force tenants to take out contents insurance for their possessions whilst renting a managed property but again, good practise dictates that a tenant is aware of and knows how to effect insurance if they so desire. Keeping a record of this on file will go a long way to showing any Tribunal member that due diligence was exercised by you or your company at the time of entering into the lease on behalf of the owner.

One very good risk management procedure is for the Agent to fully and completely document the condition of the property when they first inspect it. With digital cameras these days it is very easy to take numerous photographs and furnish them on the landlord. You then you have a visual record of the condition of the property at the beginning of a management. It can also be done at the beginning of each tenancy. Further the Agent would back the visual record up with a written report



such as an attachment, which covers all the main issues that need to be addressed with the owner at the beginning of a tenancy.

Technology has come a long way and various companies now have products that provide excellent visual and documentation systems that will assist a professional agent in preparing an excellent visual report on the condition of rental properties.

https://www.reinsw.com.au/Web/Store/REI_Inspect_Live/Web/Store/REI_Inspect_Live.aspx

<https://inspectionmanager.com/>

<https://www.propertyme.com.au/integrations/inspection-manager>

THEFT AND FRAUD

Theft and the threat of hold-up are key issues that need to be addressed in a real estate office. Some agencies handle various amounts of cash and proper provision should be made to safeguard these areas and ensure that staff is well protected.

The financial accounting process should not be handled by only one person to prevent the possibility of theft or fraud occurring. Accounting and audit practices require different people for each step of the accounting process. For example, if the receptionist receipts money then the property clerk needs to bank the money and the bookkeeper reconciles the accounts. If your employees work late, they should be able to safely return to their cars from the office or to their transport home. This may need to be factored into your security considerations. If employees are assaulted or robbed in these circumstances, liability may be attached to the employer.

Offices should have signs that minimal cash is kept on the premises. They should have adequate locking systems with alarms and panic buttons fitted. Monitored alarms with individual codes and security cameras should be considered where necessary.

Offices can be seen as soft targets for robbery. One Agent was required to pay large compensation to a severely traumatised employee due to the lack of security provisions as outlined in this section.

The other factor to consider is a safe. Time delay safes are the recommended variety that emanated from the case mentioned above.

The NSW Police conduct security assessments of businesses and briefing of staff free of charge. It is worth investing the time to have your office assessed and the Police talk to your staff, as this is a simple and cost-effective risk management strategy.



IDENTITY THEFT 54

The other main risk management activity that should be addressed is when the Management Agency Agreement is entered into. The ownership of the property should be checked against an independent reliable record e.g. RP data or a rate notice or even the Valuer Generals report if such a document is available at the time of signing. Then, request a document that ties the owner to the property, such as a council rate notice, strata levy notice or a water rate notice.

From here, you would positively identify the owner by requesting they produce a driver's license, passport or other forms of identification which verifies their individual identity.

Only then will the Agent know the full ownership of the property and whom they need signatures for.

Agents need to be aware that all owners or their legal representatives need to sign the agreement and a copy served on the owners within 48 hours of the last owner signing.

Fair Trading has produced a checklist to assist agents positively identify their clients and it is good practice to use this checklist each and every time a contract to sell or manage a prospects property is entered into.

https://www.fairtrading.nsw.gov.au/_data/assets/pdf_file/0008/371888/Real_estate_fraud_prevention_guidelines.pdf

TENANCY DATABASES

Under the Property & Stock agents Regulations Real Estate Agents must:

1. Advise the tenant at the time of entering into a residential tenancy agreement that breach of the agreement could result in the use and disclosure of their personal information for listing on a tenant database
2. Give a tenant/former tenant written notice of the Agent's intention to list the tenant on a tenant database prior to listing:
 - Give the tenant a reasonable opportunity to review and correct the information to be listed, and in the event of disagreement between the tenant and Agent about the information to be listed, ensure that the tenant's object is noted on the database



3. Not list a tenant for minor breaches of a tenancy agreement
 - a tenant can only be listed if the tenancy agreement has terminated, and the tenant either still owes the landlord an amount of money for rent arrear and/or damage to the premises, or
 - is subject to one of the following NSW Civil and administrative orders (NCAT):
 - an order to pay the landlord an amount of money and the time for paying the money has passed
 - a termination and possession order for breach of the Residential Tenancy Agreement (Section 62 (2)(a)(ii) of the Residential Tenancies Act 1987)
 - a termination and possession order for serious and persistent breach of the Residential Tenancy Agreement (Section 62(2)(b) of the Residential Tenancies Act)
 - a termination and possession order for serious damage or injury (Section 68 of the Residential Tenancies Act)
4. Notify a tenant database operator within 7 days after becoming aware that a debt listed on that database has been paid
5. Only contract with tenant database operators who: 55
 - provides tenants with free access to listed information about him/her, and
 - amends incorrect, inaccurate or incomplete information without any charge to the tenant, and
 - makes a note on the database where a tenant objects to an Agent's dispute of the tenant's claim for amendment of the listed information
6. Ensure that listings do not remain on databases for period of time which are excessive given the magnitude of the breach involved – a real estate Agent can only use a tenant database if the operator agrees to delete listing within the following specified timeframes:
 - if a debt is paid within 3 months of being incurred then the listing must, within 7 days of the database operator being notified, be amended to remove any reference to the debt, and deleted from the database (unless the tenant has also been listed for a reason other than non-payment of a debt);
 - if a debt is paid after three months from when it was incurred then this must be noted on the listing within 7 days of the database operator being notified of payment, and the listing must be removed on the third anniversary of the date of the listing, and deleted from the database (unless the tenant has also been listed for a reason other than non-payment of a debt);
 - in the case of a listing for a reason other than non-payment of a debt, the listing must be amended on the third anniversary of the date of the listing to remove any reference to the reason for the listing, and



deleted from the database (unless the tenant has also been listed for any of the reasons specified in Clause 4(2) of the Regulation for less than 3 years.

Failure to observe rules of conduct is an offence under the Property & Stock Agents Regulation 2003 and attracts penalties of up to \$4,400 for corporations and \$2,200 for individuals and partnerships.

SWIMMING POOLS

The current swimming pool and spa laws for all NSW properties (including rental properties), came into force on the 29th of April, 2015. Since that day, all rental properties with a swimming pool or spa, must have a valid swimming pool occupation certificate of compliance **before they can be rented out.** ⁵⁶ It is a condition of signing a Tenancy Agreement, that if a property has a swimming pool, the certificate of compliance has been acquired and a copy is given to the tenant to keep. Property Managers should not even attempt to advertise a property or even show prospective tenants (with or without accompanying children) through a property with a pool, unless they have made sure to be in possession of a certificate first!

Pool compliance certificates – which can only be granted upon inspection and only if the pool's fencing and surrounding areas meet regulation, are valid for 3 years. The law says that use of the pool is ONLY authorised when the occupants of a NSW property – (the tenants and their guests when it comes to a rental property) – are in possession of a current certificate. Assessment of pools for meeting regulation, is quite complex and will depend on when the pool was built, the height and design of the pool fence, as well as what is in the surrounding areas.

Tenants MUST be provided by Law with a less than 3 years old certificate of compliance upon signing the residential tenancy agreement.

So which pools come under consideration? According to legislation, ALL in ground, above-ground, indoor, portable and every type of pool and spa, that is capable of being filled to a **depth of 300mm or more**, come under consideration. Bathroom spas, that are used as baths and emptied after use **are NOT**, as is the case for any property that is part of a strata or community scheme of more than TWO lots.

The latter is because responsibilities for pools and spas in Strata and Community Title Schemes rests jointly with all unit owners. It is therefore the Owner's corporation's (or 'body corporate') responsibility to ensure that there is a valid certificate of compliance or occupation certificate for all such pools. The same applies in community title schemes, where responsibility rests with the community association.



The above means that, if you are a landlord owning a stand-alone rental property with a swimming pool or spa, you are NOW under the consideration of the NSW Swimming Pools Act AND you should be aware of your obligation under the Law.

Whilst properties in strata and community schemes are not the responsibility of the rental agent, any property with 2 units or less of occupancy with a structure that is capable of being filled to a depth of 300mm or more of water, comes under consideration.

Obtaining a certificate and Property Manager Requirements

Certificates of compliance get issued by the local councils or accredited certifiers under the Building Professional Act, after a visual inspection of the pool and surrounding area. If the pool meets all the safety requirements a certificate will be issued. If the requirements are NOT met, then rectification work will be necessary.

To check if your property (with a swimming pool) has a certificate of compliance already, you can go to the NSW Swimming Pool Register and search for your property. If you have a rental property and you can't find the address in the register, our recommendation is to ring your owner/landlord IMMEDIATELY. Property Managers would then need to contact their local council immediately, as either the pool hasn't not been registered OR no certificate was ever issued!

Agents and Landlords can check if their rental property has a valid Pool Certificate of Compliance by going to

<https://www.swimmingpoolregister.nsw.gov.au/>

Local councils charge around \$150 for an initial pool safety inspection, and \$100 if a second inspection is required (accredited certifiers set their own schedule of fees). This is in addition to any rectification costs. These costs are only required once every 3 years and are tax deductible. When one considers the magnitude of risks associated with pools, the costs are therefore negligible!

If you are an Agent and manage a property in NSW that has a pool, it is in your best interest to be aware of your obligations and to ensure your Landlord is doing what they are meant to – including always having a current certificate AND remembering to renew it every 3 years. Don't assume your owner is diligent as, sadly, not all always are! 57

In the eyes of the law, Landlords cannot absolve themselves by passing their responsibilities to their Property Manager in the event of an accident. Should a disaster happen whereby a tenant or their guest loses their life, not knowing, would not be a valid excuse in front of our courts. It is also quite likely that public liability contained in landlord insurances, becomes void **if the accident is assessed to be the result of "negligence"** which may be the case if the pool had not been inspected and tenants used it without a current certificate.



Your Landlord Insurance Public Liability may not cover the owner in the event of a drowning in your managed rental property's swimming pool, IF YOU DO NOT HAVE A VALID CERTIFICATE OF COMPLIANCE!

As Landlords and Property Managers, ensuring the safety and well-being of our tenants (especially children), is not only our obligation, it also makes good business sense by reducing the personal and financial risks. You don't want your tenants to become a statistic, neither do you want to have it on your conscience.

Can you really afford to just leave it to chance? If your rental property has a pool, make sure to speak to your Landlord and ask to see the Certificate of Compliance.

If they cannot produce one then document everything in writing and commence proceedings to obtain a Compliance Certificate immediately. If the landlord becomes obstructive, advise them of their obligations and the potential consequences of a drowning should it occur.

SMOKE ALARMS

From 23 March 2020, NSW landlords and agents need to ensure that smoke alarms installed in rented properties are in working order.(Residential Tenancies Regulations 2019.

Requirements for landlords and agents

- Where a smoke alarm is not in working order, landlords and agents must ensure the alarm is repaired (this includes replacing a battery) within 2 business days.⁵⁸
- Landlords and agents must check smoke alarms every year to ensure they are working.
- Landlords and agents must ensure:
 - smoke alarms are replaced within 10 years of manufacture, or earlier if specified by the manufacturer
 - inspections are made and batteries are installed or replaced every year (or for lithium batteries, in the period specified by the manufacturer)
- Landlords and agents must give at least 2 business days' notice to inspect or assess the need for smoke alarm repair or replacement, and at least 1-hour notice to carry out repair or replacement of a smoke alarm.

Requirements for tenants

- Tenants must notify their landlord or agent if they discover that a smoke alarm is not working (this includes when the battery needs to be changed)
- Tenants must notify their landlord when they change a battery in a smoke alarm or engage a licensed electrician to repair or replace an alarm. This



does not apply to social housing tenants. (See the landlords and tenants' obligations in the table below)

- The regulations made under the *Environmental Planning and assessment Act 1979* provide that it is an offence to remove or interfere with the operation of a smoke alarm or heat alarm in particular circumstances

Battery-powered alarms

Type of repair	Responsibility in non-strata premises	Responsibility in strata premises
Replace alarm unit	<p>The landlord, agent or person authorised by the landlord</p> <p>The tenant may replace the alarm unit or arrange for the unit to be replaced if the landlord or agent does not do this within 2 business days of being notified that the alarm is not working. The tenant must notify the landlord or agent within 24 hours of the work being completed</p>	<p>The landlord, agent or person authorised by the landlord, unless the Owners Corporation is responsible (this will be indicated in the tenancy agreement)</p> <p>If the Owners Corporation is not responsible, the tenant can arrange for replacement if the landlord or agent does not do this within 2 business days of being notified that the alarm is not working. The tenant must notify the landlord or agent within 24 hours of the work being completed</p>
Repair alarm unit	<p>Battery operated alarm units should not be repaired unless the repair is changing the removable battery in the alarm</p> <p>Otherwise, the alarm unit should be replaced</p>	<p>Battery operated alarm units should not be repaired unless the repair is changing the battery in the alarm</p> <p>Otherwise, the alarm unit should be replaced</p>
Change removable battery	<p>The landlord, agent or person authorised by the landlord</p> <p>The tenant can choose to change the battery – they must:</p> <ul style="list-style-type: none"> let the landlord know that they will replace the battery replace the battery within 2 business days notify the landlord or agent within 24 hours of replacing the battery 	<p>The landlord, agent or person authorised by the landlord, unless the Owners Corporation is responsible (this will be indicated in the tenancy agreement)</p> <p>If the Owners Corporation is not responsible, the tenant can arrange for replacement if the landlord or agent does not do this within 2 business days of being notified that the alarm is not working. The tenant must notify the landlord or agent within 24 hours of the work being completed</p>



Hard-wired alarm

Type of repair	Responsibility in non-strata premises	Responsibility in strata premises
<p>Replace alarm unit</p>	<p>A licensed electrician arranged by the landlord or agent</p>	<p>A licensed electrician:</p> <ul style="list-style-type: none"> - arranged by the Owners Corporation if they are responsible (this will be indicated in the tenancy agreement) - arranged by the landlord or agent if the Owners Corporation is not responsible
<p>Repair alarm unit</p>	<p>The Tenant may engage a licensed electrician if the landlord does not arrange for the work within 2 business days of being notified that the alarm is not working. The tenant must notify the landlord within 24 hours of the work being completed</p>	
<p>Change removeable back-up battery</p>	<p>The landlord, agent or person authorised by the landlord</p> <p>The tenant can choose to change the battery – they must:</p> <ul style="list-style-type: none"> • Let the landlord know that they will replace the battery • Replace the battery within 2 business days • notify the landlord or agent within 24 hours of replacing the battery 	<p>The landlord, agent or person authorised by the landlord, unless the Owners Corporation is responsible</p>



REIMBURSEMENT FOR REPAIRS 59

A tenant is entitled to reimbursement within 7 days after giving written notice of relevant expenses. The notice must detail the nature and cost of repairs, including replacing batteries, together with copies of receipts or invoices. (Clause 18 of the Residential Tenancies Regulation 2019). This does not apply to social housing tenants.

It is important to note here that the tenant must first give notice to the landlord or agent that they will move to affect the repair. So, if notice is given by the tenant to you as the agent you should take control of the process and have the repair carried out by your own electrician or handyman within 2 business days as the law requires. Be sure to document the repair. Due to the ramifications involved if the repair is not done correctly an agent needs to be in control of organising the repair, documenting the repair and paying a reasonable price for affecting the repair to a suitably qualified person.

The installation and ongoing maintenance of smoke alarms in Residential premises is a big risk area for agents and as such, needs to take priority on any risk management agenda.

It is recommended that the ongoing maintenance of smoke alarms be out sourced to specialist fire companies that will monitor, inspect and repair the smoke alarms and thus meet the requirements of the legislation. These costs can be passed back onto the landlord and are tax deductible. In doing so, the agent eliminates one area of large risk in their business. Costs to employ such companies are relatively inexpensive.

However, as an agent you have both a duty of care to your landlord and tenant to regularly test a smoke alarm at each and every opportunity. Just because you have outsourced the task to a professional smoke alarm company and the Regulations state that a mandatory test be carried out at least once per year and the battery replaced, (excluding alarms that contain lithium batteries), does not mean that your obligations to ensure a safe environment no longer exist. It is quite common that tenants will remove "beeping" alarm batteries (if not the whole alarm) so that they can get some sleep and then simply forget to do anything further.⁶⁰

Ideally, at every inspection of the property, from ingoing to routine to outgoing (and everywhere in between), a diligent property officer will have a checklist noting that smoke alarms were tested and notes made as to the working order of all smoke alarms in the premises. This is best practice.

<https://www.detectorinspector.com.au>

<https://sydneySmokealarms.com.au/>



If a landlord decides to service their own smoke alarms, (not recommended) they will need to provide you with photographic proof of the date of service, the type of smoke alarm and that the battery that was replaced. A letter from the landlord testifying that the smoke alarm was operational at the completion of servicing and every time it is serviced is also recommend to be kept on file.

At each regular inspection you would need to test the smoke alarm and report any non-compliances immediately in writing to your landlord. Smoke alarms cannot remain non-operational for more than 2 business days. The tenant has the right to repair/replace a non-functioning smoke alarm if a landlord or agent fails to do so and can be compensated for the cost. (see tables above)

Using a professional smoke alarm company removes this burden and risk from landlords or agents. These companies also carry the required insurances in the event that they are negligent in their duties and are pursued by landlords or tenants for loss or damage (and death) in the event of unforeseen catastrophic fire in a rental property that you manage.

**THIS NOW CONCLUDES THE READING MATERIAL FOR
THE COMPULSORY CPD COURSE FOR 2020 ON**

**CPD TOPIC 1: 2020 REAL ESTATE REFORMS (INCLUDING TRUST ACCOUNT
REQUIREMENTS) (1 HOUR)**

CPD TOPIC 2: RULES OF CONDUCT (1 HOUR) AND

CPD TOPIC 3: RISK MANAGEMENT (RESPONSIBILITIES OF AGENTS)

TOTAL LEARNING HOURS: 3 (PLUS ASSESSMENT TIME)

