



NSW Fair Trading Property, Stock and Business Agents Regulation 2014

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Estate Agents Co-operative Ltd pleased with outcome of Regulation review in regard to 'Property, Stock and Business Agents Act 2002'

FOR IMMEDIATE RELEASE – FRIDAY 5 SEPTEMBER, 2014.

Rosehill, NSW – Estate Agents Co-operative (EAC) is pleased with the outcome of the Regulations review in regard to the 'Property, Stock and Business Agents Act 2002.'

The process led by the Minister for Fair Trading, Matthew Mason-Cox, was transparent and achieved properly balanced result for property consumers and practitioners. EAC and other industry bodies were united in their views which differed from the vested interests of some large scale property owners and developers who wished to operate their affairs outside established and proven operational rules.

Some of the proposed revisions to the Regulation were deemed to be badly flawed by EAC, and did not properly represent the needs of commercial real estate consumers in New South Wales and accordingly were not supported.

“EAC and other industry bodies have worked together, as we have in the past, to defend agency standards and consumer protection on issues such as this and we have done so again in review of this Regulation” said David Crombie, CEO of EAC. “In this instant EAC worked in conjunction with REINSW to review and provide our feedback relating to the overall negative impact of proposed changes

to the Regulation. We are pleased with the result and would like to thank Minister Mason-Cox for the ease of the process and for an outcome that maintained consumer protection and an operational process for practitioners that is clear and consistent.”

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About Estate Agents Co-operative Ltd

Estate Agents Co-operative Ltd or EAC is a co-operative of real estate agents, which was formed in Sydney in 1960 to exchange information about properties for sale. From humble beginnings, when EAC comprised just seven members in the metropolitan area, the Co-operative has now grown to include several hundred members across New South Wales and the ACT.

EAC is a premium service provider to the real estate and property industry and provides a range of services covering, Membership, Practice Support, Training, Listing Management, Property Information, Web Sites and Real Estate Forms to over 2,000 Real Estate offices comprising of both independent offices and franchisees from all the major franchise groups, valuers and government departments throughout Australia.

Summary of Changes to Property Stock and Business Agents Regulation 2014

CI Ref No	Change	Reason
Major changes		
Clause 19	<p>Provision of unique identifying number when opening or maintaining a general trust account.</p> <p>Licensees who open a general trust account from 1 January 2015 in accordance with section 86(4) of the Act will be required to obtain from the NSW Fair Trading a unique identifying number and provide it to the authorised deposit-taking institution at the time of making the application.</p> <p>Licensees who maintained general trust accounts on 31 December 2014 must obtain a unique identifying number for each general trust account maintained and provide it to their authorised deposit-taking institution before 1 July 2015.</p>	A unique identifying number issued by Fair Trading to agents operating general trust accounts will ensure that banks account for the interest in respect to all these general trust accounts.
Clause 37 (3) (a)	<p>Report to be prepared by managing agent.</p> <p>Managing agents must now prepare a report for money held in separate trust accounts kept for the owners corporation or association-at least every 3 months instead of every 6 months.</p>	Increased frequency of reporting will improve transparency of reporting by the managing agents to the owners corporation or association, and consistency of frequency between clauses 37 (3) (a) and (b).
Clause 38 (3)	<p>Managing agent to permit executive to inspect records.</p> <p>When a managing agent has not complied with Clause 38 (2), the authorised deposit-taking institution or other person or body with which money of the corporation or association is or has been invested may disclose to a member of the executive committee of the corporation or association at the request of the member, any information relating to that money as though subclause (2) has been complied with.</p>	This ensures that a corporation or association can obtain information about the investment of its money from the body the money is invested with, when the managing agent has not complied with Clause 38 (2).
Schedules 8 (3), 10 (3) and 11 (3)	<p>Warning if agreement includes a term that a commission is payable.</p> <p>From 1 January 2015 if an agency agreement includes a term that a commission is payable even if the sale of the property is not completed the agency agreement must include the following statement (immediately after that term)</p> <p>Warning: A commission is payable under this agreement even if the sale of the property is not completed.</p>	To warn the seller of residential property, rural land or a business that the sales agreement contains a term that commission is payable even though the sale of the property is not completed.
Minor Changes		
Clause 8	<p>Contents of agency agreements.</p> <p>Minor drafting change to sub clause 8 (4) (a) (iv)-to include 'electronic' after the reference to persons.</p>	Clarifies that the address is the person's electronic address for the service of the agency agreement to that person.

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Clause 14	Proof of identity for bidders record. To avoid repetition old clauses have been combined.	As mentioned in column 2.
Clause 15 (1) (a)	Condition of sale by auction. The words 'this does not apply to a sale solely of livestock' inserted after the word 'commences'.	Clarifies that the requirements for a vendor's reserve price to be given to the auctioneer before the auction commences, does not apply. if the sale only involves livestock. The amendment reflects the nature of livestock markets e.g. most livestock sold without a reserve price; and the climatic conditions, environment and speed of auctions means it would not always be feasible to provide a written reserve price in any case.
Clause 24 (3) (c)	Payment of trust money. After the word 'drawn' the words: "and the invoice number it is applicable to, if one is available." have been inserted.	Additional information provides an improved audit trail when checking on the basis for the cheque payments which have been made from the licensee's trust account.
Clause 30 (b)	Furnishing particulars of trust account or transactions. Removed the words 'registered post'.	Removes reference to an outdated form of requiring the licensee to provide requisitioned information to departmental staff – expression "registered post not generally used in legislation these days.
Clause 34 (2)	Records of livestock bought. Old subclause requiring records to be kept of livestock to be bought deleted because its impractical and unnecessary red tape.	The stock and station agent should record the cl.34(2) details as a matter of good business practice. The incentive for the agent to do this, is to minimise the risk of making a mistake about what stock it was agreed to purchase for the principal. These records are less useful as an audit trail, as there is no requirement to give a receipt to the principal, and in any case it may be impractical to do so, e.g. if the order is phoned to the agent at the saleyards just before the auction starts. In any case cl.34(3) requires a record of the transaction to be made after the purchase takes place.
Clause 39	Section 31 exemptions. The words 'For the purposes of subclause (1)' inserted at the beginning of the preamble of subclause 2	Additional words added to clarify the relationship between subclauses 30 (1) and (2).
Clause 45	Exemptions for persons acting as travel agents. The <i>Travel Agents Act 1986</i> repealed as from 1 July 2014. The repeal of the <i>Travel Agents Act</i> could inadvertently capture the work currently undertaken by licensed travel agents. It is not intended for this to happen.	Under the 2003 PS&BA Regulation, clause 47 exempted a person who was licensed under the <i>Travel Agents Act 1986</i> from the requirements of the <i>PS&BA Act 2002</i> , when carrying on business as a travel agent. The new clause 45 provides for this exemption to continue, now that the <i>Travel Agents Act</i> has been repealed.

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Schedule 1 subclause 8	<p>To act in accordance with client authority.</p> <p>It has been made clear that this clause does not apply to the sale solely of livestock.</p>	<p>The written authority requirement has been deleted for agents selling stock, as procedural arrangements applying to the sale of livestock make it impractical.</p> <p>For example, livestock generally booked into the sale or arrive unbeknown to the agent. Livestock is accompanied by a Travelling Stock Statement on National Vendor Declaration signed by the vendor or person responsible for the livestock. These documents include the owner's name, address and description of stock.</p>

Matters Under Consideration

The possibility of introducing limited exemptions for commercial property agency work was included as part of the consultation process for the PS&BA Regulation. This matter remains under consideration by the Government and has not been included in the 2014 Regulation.