



Australian Capital Territory

Agents Regulation 2003

SL2003-38

made under the

Agents Act 2003

Republication No 5

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Last amendment made by SL2005-10

Not all amendments are in force: see last endnote

Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Agents Regulation 2003*, made under the *Agents Act 2003* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 28 May 2005. It also includes any amendment, repeal or expiry affecting the republished law to 28 May 2005.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

authorised republications to which the *Legislation Act 2001* applies

- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



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Australian Capital Territory

Agents Regulation 2003

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Agents Act 2003

Part 1 Preliminary

1 Name of regulation

This regulation is the *Agents Regulation 2003*.

3 Dictionary

The dictionary at the end of this regulation is part of this regulation.

Note 1 The dictionary at the end of this regulation defines certain terms used in this regulation, and includes references (*signpost definitions*) to other terms defined elsewhere in this regulation or in other legislation.

For example, the signpost definition '*statement of attainment*—see the *Tertiary Accreditation and Registration Act 2003*, dictionary.' means that the term 'statement of attainment' is defined in that dictionary and the definition applies to this regulation.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire regulation unless the definition, or another provision of the regulation, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

4 Notes

A note included in this regulation is explanatory and is not part of this regulation.

Note See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

5 Offences against regulation—application of Criminal Code etc

Other legislation applies in relation to offences against this regulation.

Note 1 Criminal Code

The Criminal Code, ch 2 applies to all offences against this regulation (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

Note 2 Penalty units

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

Part 2 Licensing

6 Qualifications for licences—Act s 25

- (1) A person has the qualifications for a real estate agents licence, stock and station agents licence and business agents licence if the person has been issued with a statement of attainment, or qualification, issued by a registered training organisation certifying that the person has competency in each of the units of the Property Development and Management Training Package (PRD01) approved by ANTA that are set out in schedule 1.
- (2) However, a person has the qualifications for a real estate agents licence if, immediately before the repeal of the repealed Act, the person was eligible for the grant of a real estate agent's licence under that Act.
- (3) A person has the qualifications for a real estate agents licence to only sell land by auction if the person has a statement of attainment, or qualification, issued by a registered training organisation certifying that the person has competency in the unit of competency PRDRE26A—conduct property sale by auction, approved by ANTA.
- (4) A person has the qualifications for a licence as a travel agent if the person has, for at least 2 years before the commencement of this section, sold tickets entitling someone else to international air travel to or from a place outside Australia, or otherwise arranged for someone else's entitlement to such travel, and—
 - (a) has successfully completed a travel agent's course approved by the commissioner for fair trading, dealing (wholly or partly) with selling tickets entitling someone else to international air travel to or from a place outside Australia, or otherwise arranging for someone else's entitlement to such travel; or

- (b) immediately before the repeal of the repealed Act, was eligible for the grant of a travel agent's licence under that Act.

7 Underpinning knowledge for property development and management training package

For section 6 (1), the underpinning knowledge for a unit of competency in the Property Development and Management Training Package (PRD01) must be based on ACT law.

7A Licence conditions—Act s 34 (1) (a)

- (1) It is a condition of a licence that the licensee satisfy the relevant requirements for continuing professional development set out in the guidelines under subsection (2).
- (2) The commissioner for fair trading may, in writing, make guidelines for continuing professional development for licensees.
- (3) A guideline under subsection (2) is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

8 Renewal of licences—Act s 36

The prescribed requirement is that the applicant has not contravened any condition imposed on the licence under the Act, including any condition put on the licence under the Act, section 34.

Example

the person has successfully completed any requirements for professional development stated as a condition of the licence

Note An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

Part 3 Registration

U 8A Eligibility of unqualified real estate salespeople for registration—Act, s 49 (2)

- (1) This section applies to an unqualified real estate salesperson who—
 - (a) works under the direct supervision of a licensed real estate agent; and
 - (b) is enrolled in a course of study that leads to the issue of a statement of attainment, or qualification, mentioned in section 9 for registration as a real estate salesperson.
- (2) The commissioner for fair trading may register the person as a real estate salesperson on condition that—
 - (a) the registration ends if any of the circumstances mentioned in subsection (1) change; and
 - (b) if the person's registration is renewed—the period of renewal, and the earlier period or periods of registration, would not be more than 2 years in total.

Note Registration is for a period of no more than 1 year (see Act, s 59).
- (3) This section does not apply to a person to whom any of the following provisions apply:
 - (a) the Act, section 185 (Employees need not have qualifications for 2 years);
 - (b) section 19 (Eligibility for registration, Act s 49—unregistered employees before commencement day);
 - (c) section 20 (Eligibility for registration, Act s 49—new employees on and after commencement day).

9 Qualifications for registration as a salesperson—Act s 50

A person has the qualifications for a position as a salesperson if the person has been issued with a statement of attainment, or qualification, issued by a registered training organisation certifying that the person has competency in each of the units of the Property Development and Management Training Package (PRD01) approved by ANTA that are set out in schedule 2.

10 Information to be included in advertisement of intention to apply for registration—Act s 52 (2)

The notice must also state the applicant's full name and postal address.

10A Registration conditions—Act s 58 (1) (a)

- (1) It is a condition of registration that a registered person satisfy the relevant requirements for continuing professional development set out in the guidelines under subsection (2).
- (2) The commissioner for fair trading may, in writing, make guidelines for continuing professional development for registered people.
- (3) A guideline under subsection (2) is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

11 Renewal of registrations—Act s 60 (3) (b)

The following requirements are prescribed:

- (a) the applicant has not contravened any condition of the registration;

- (b) the applicant has not contravened any other condition put on the registration under the Act, section 58.

Example for par (a)

the person has successfully completed any requirements for professional development stated as a condition of registration

Note An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

Part 4 **Conduct of licensed agents and registered salespeople**

Division 4.1 **Licensed agent's main place of business**

12 **Notice of change of main place of business—Act s 68 (2)**

The period in which the commissioner for fair trading must be told about a change in the licensed agent's main place of business is 5 business days beginning on the day after the change.

Division 4.2 **Management of licensed agent's business**

13 **Licensed agent to be in charge of business— exemptions—Act s 71 (3)**

- (1) In deciding whether to exempt a licensed agent from the Act, section 69 (Each place of business to have licensed agent in charge), or amend or revoke an exemption, the commissioner for fair trading must consider—
 - (a) the reasons for the exemption; and
 - (b) the licensee's experience as licensee-in-charge at a place of business of a licensee; and
 - (c) the licensee's capacity to properly supervise the conduct of business at more than 1 place of business; and
 - (d) office systems or arrangements established, or to be established, at each place of business; and
 - (e) staffing and office management arrangements at each place of business concerned; and

- (f) whether there is a centralised trust account for the deposit of trust money received in connection with the businesses for which the licensee would be licensee-in-charge under the exemption; and
- (g) the licensee's record in relation to compliance with the Act or the repealed Act, including compliance with any condition of a licence or registration during the previous 5 years; and
- (h) employer references (if any) in relation to the licensee's experience as a licensee-in-charge.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

- (2) In deciding whether to exempt a licensed agent from the Act, section 70 (Licensed agent to be in charge of 1 place of business), or amend or revoke an exemption, the commissioner for fair trading must consider—
 - (a) the reasons for the exemption; and
 - (b) the licensee's experience as licensee-in-charge at a place of business of a licensee; and
 - (c) the licensee's capacity to properly supervise the conduct of business of more than 1 licensee; and
 - (d) fiduciary safeguards and office systems established, or to be established, to provide for accountability to the licensee-in-charge; and
 - (e) whether separate trust accounts are in place for the deposit of trust money received in connection with the business of each licensee for whom the licensee would act under the exemption; and
 - (f) the licensee's record in relation to compliance with the Act or the repealed Act, including compliance with any condition of a licence or registration during the previous 5 years; and

- (g) employer references (if any) in relation to the licensee's experience as a licensee-in-charge.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

Division 4.3 Land—further provisions

14 Agents giving financial and investment advice—Act s 83

- (1) This section applies to financial or investment advice that—
- (a) is intended to influence the person to whom it is given in making a particular financial or investment decision about the sale or purchase of land; or
 - (b) could reasonably be regarded as being intended to have that influence.
- (2) A real estate agent who gives the advice must give the following information or warning:
- (a) a warning that the advice is general advice only and that its preparation has not taken into account the individual circumstances of the person;
 - (b) for advice given about the purchase of land—a warning that an intending purchaser should assess the suitability of any investment in the property in the light of their own needs and circumstances, and that they can do this themselves or by consulting an appropriately licensed financial adviser;

- (c) information that discloses the existence and nature of any conflict of interest the agent may have in relation to the giving of the advice.

Example for par (c)

an entitlement to commission or referral fees

Note An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

Part 5 Agency agreements

15 Content of agency agreements, Act s 100 (1) (c)

- (1) An agency agreement must comply with schedules 3 to 7.
- (2) The schedules apply as follows:
 - (a) schedule 3 applies to all agency agreements (in addition to any other schedule that may apply to the agreement);
 - (b) schedule 4 applies to an agency agreement under which the agent will act for the seller on the sale of residential property;
 - (c) schedule 5 applies to an agency agreement under which the agent will act for the buyer on the purchase of land;
 - (d) schedule 6 applies to an agency agreement under which the agent will act for the seller on the sale of rural land;
 - (e) schedule 7 applies to an agency agreement under which the agent will act for the seller on the sale of a business or professional practice.
- (3) A reference in schedules 3 to 7 to *property* (other than as a reference to residential property) includes a reference to land.
- (4) An agency agreement must not contain anything inconsistent with the requirements of this part, but this section does not otherwise limit the terms that an agency agreement may contain.

Part 6 Miscellaneous

16 Use of excess trust money—Act s 163

The purposes for which the trust money must be used are those mentioned in the Act, section 163 (2) (a) to (g).

17 Rules of conduct for agents—Act s 171 (1)

- (1) Schedule 8 sets out the rules of conduct to be observed by licensed agents and registered salespeople.
- (2) Schedule 8 applies as follows:
 - (a) part 8.2 applies to all licensees and registered salespeople (in addition to any other schedule applicable to a particular kind of licensee or registered salesperson);
 - (b) part 8.3 applies to real estate agents and registered salespeople they employ;
 - (c) part 8.4 applies to stock and station agents and registered salespeople they employ;
 - (d) part 8.5 applies to business agents and registered salespeople they employ.

18 Rules of conduct for auctioneers—Act s 171 (1)

An auctioneer who advertises an auction must include the auctioneer's name and licence number in the advertisement.

Part 7 Transitional provisions

19 Eligibility for registration—unregistered employees before commencement day—Act, s 49 (2)

- (1) This section applies to a person who, immediately before 1 November 2003 was employed by a licensed real estate, stock and station or business agent under the repealed Act.
- (2) The commissioner for fair trading may register the person as a registered salesperson subject to the condition that the person obtain a statement of attainment, or qualification, issued by a registered training organisation certifying that the person has competency in each of the units set out in schedule 2 within 2 years after 1 November 2003.

20 Eligibility for registration—new employees on and after commencement day—Act, s 49 (2)

- (1) This section applies to a person who, on and after 1 November 2003—
 - (a) is employed by a licensed real estate, stock and station or business agent; and
 - (b) does not hold a statement of attainment, or qualification, issued by a registered training organisation entitling the person to be a registered salesperson; and
 - (c) is enrolled in the units of competency mentioned in schedule 2 with a registered training organisation for registration as a salesperson employed by a licensed real estate, stock and station or business agent.

- (2) The commissioner for fair trading may register the person as a registered salesperson subject to the condition that the person obtain a statement of attainment, or qualification, issued by a registered training organisation certifying that the person has competency in each of the units set out in schedule 2 before 1 November 2004.

20A Eligibility for registration—certain unqualified real estate salespeople—Act, s 49 (2)

- (1) This section applies to an unqualified real estate salesperson if—
- (a) the person is employed by a licensed real estate agent to provide commercial real estate agent services to a single customer; and
 - (b) the employer carries on business as a real estate agent only for the customer; and
 - (c) both the employer and the customer are corporations; and
 - (d) the employer is, under the Corporations Act—
 - (i) a subsidiary of the customer; or
 - (ii) related to the customer; or
 - (iii) an entity associated with the customer.
- (2) The commissioner for fair trading may register the person as a real estate salesperson on condition that the registration ends on the earlier of the following:
- (a) when any of the circumstances mentioned in subsection (1) change;
 - (b) 1 June 2006.
- (3) This section does not apply to a person to whom any of the following provisions apply:
- (a) the Act, section 185 (Employees need not have qualifications for 2 years);

- (b) section 8A (Eligibility for registration—unqualified real estate salespeople)—Act, s 49 (2);
 - (c) section 19 (Eligibility for registration—unregistered employees before commencement day)—Act, s 49 (2);
 - (d) section 20 (Eligibility for registration—new employees on and after commencement day)—Act, s 49 (2).
- (4) In this section:

commercial real estate agent service means a real estate agent service that does not relate to residential property.

residential property—see the *Civil Law (Sale of Residential Property) Act 2003*, section 8.

21 **Expiry of pt 7**

This part expires on 1 June 2006.

Schedule 1 Qualifications for real estate, stock and station, and business agents licences— units of competency in PRD01

(see s 6)

column 1 item	column 2 unit no	column 3 unit title
1	PRDRE01A	Develop a strategic business plan
2	PRDRE02A	Manage agency performance
3	PRDRE03A	Develop and implement client service strategies
4	PRDRE04A	Manage and monitor effective client service
5	PRDRE05A	Market agency
6	PRDRE06A	Manage human resources
7	PRDRE08A	Manage efficient financial systems
8	PRDRE09A	Implement and monitor financial management systems
9	PRDRE10A	Manage agency risk, including underpinning knowledge of the Act and relevant legislative framework for the following: <ul style="list-style-type: none"> • fair trading and consumer protection law • contract law • property law • commercial law principles • professional ethics for real estate
10	PRDRE11A	Provide property appraisal

column 1 item	column 2 unit no	column 3 unit title
11	PRDRE12A	Establish and expand client base
12	PRDRE13A	Obtain property listings
13	PRDRE14A	Market property
14	PRDRE15A	Undertake property sale by private treaty
15	PRDRE16A	Monitor sales process
16	PRDRE17A	Effectively manage property and account to landlord
17	PRDRE18A	Lease property
18	PRDRE19A	Provide property management services
19	PRDRE22A	Present and explain property reports
20	PRDRE28A	Maintain trust accounts
21	PRDRE30A	Implement personal marketing plan
22	PRDRE31A	Negotiate effectively with landlords and tenants
23	PRDRE32A	Maintain and protect conditions of rented properties
24	PRDRE37A	Perform and record property management activities and transactions
25	PRDRE39A	Prepare and execute documentation
26	PRDPOD62A	Clarify and confirm property information requirements
27	BSAFIN501B	Manage payroll records for employee salaries and statutory record keeping purposes

Schedule 1 Qualifications for real estate, stock and station, and business agents
licences—units of competency in PRD01

column 1 item	column 2 unit no	column 3 unit title
28	BSAFIN502B	Monitor and control disbursements within a given budget
29	BSAFIN1504B	Participate in, lead and facilitate work teams (at level 5)
30	BSAFIN1511B	Contribute to the development of a workplace learning environment
31	BSAORG501B	Manage meetings to achieve identified team/section goals

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

Schedule 2 Registration of salespeople— units of competency in PRD01

(see s 9)

column 1 item	column 2 unit no	column 3 unit title
1	PRDRE10A	Manage agency risk, including underpinning knowledge of the Act and relevant legislative framework for the following: <ul style="list-style-type: none"> • fair trading and consumer protection law • contract law • property law • commercial law principles • professional ethics for real estate
2	PRDRE11A	Provide property appraisal
3	PRDRE12A	Establish and expand client base
4	PRDRE13A	Obtain property listings
5	PRDRE14A	Market property
6	PRDRE15A	Undertake property sale by private treaty
7	PRDRE16A	Monitor sales process
8	PRDRE17A	Effectively manage property and account to landlord
9	PRDRE18A	Lease property
10	PRDRE19A	Provide property management services
11	PRDRE22A	Present and explain property reports
12	PRDRE26A	Conduct property sale by auction

Schedule 2 Registration of salespeople—units of competency in PRD01

column 1 item	column 2 unit no	column 3 unit title
13	PRDRE37A	Perform and record property management activities and transactions
14	PRDRE39A	Prepare and execute documentation
15	PRDPOD62A	Clarify and confirm property information requirements

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

Schedule 3 Terms applying to all agency agreements

(see s 15)

3.1 Identification of property

- (1) The agreement must state the address of the property to which the agreement applies or must contain a description of the property that clearly identifies it.
- (2) This section does not apply to an agency agreement to act for the buyer of land.

3.2 Names of parties to agreement

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

3.3 Information identifying parties

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

3.4 Principal's authority to enter into agreement

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

3.5 Authorisation for licensee to act on behalf of principal

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

3.6 Duration of the agreement

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

3.7 Termination of the agreement

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

3.8 Reimbursement of licensee

If the licensee is to be entitled to any sum or reimbursement for expenses or charges incurred by the licensee in relation to services provided under the agency agreement, the agreement must include a term that:

- (a) states that the licensee is so entitled; and
- (b) describes the services; and
- (c) states the amount that the licensee is entitled to and when it is payable; and
- (d) states that the services and amounts can be varied only with the agreement in writing of the principal.

3.9 Remuneration

- (1) The agreement must include a term stating—
 - (a) the circumstances in which the licensee is entitled to remuneration (by way of commission or otherwise) for services performed under the agreement; and
 - (b) the amount of the remuneration or how it is to be worked out; and
 - (c) when the remuneration is payable.

- (2) If the agreement relates to the sale or purchase of residential property and provides for payment of commission to the agent worked out as a percentage of the sale or purchase price, the term must also state the amount of the remuneration to which the licensee will be entitled worked out on the basis of a stated estimated sale or purchase price for the property.

Schedule 4 Terms specific to agency agreements for sale of residential property

(see s 15)

4.1 Exclusive agency and sole agency agreements

- (1) If the agency agreement is an exclusive agency agreement the agreement must include the following statement:

IMPORTANT: This is an exclusive agency agreement. This means you may have to pay the agent commission even if another agent (or you) sells the property or introduces a buyer who later buys the property.

- (2) If the agency agreement is a sole agency agreement the agreement must include the following statement:

IMPORTANT: This is a sole agency agreement. This means you may have to pay the agent commission even if another agent sells the property or introduces a buyer who later buys the property.

- (3) An agency agreement is an *exclusive agency agreement* if the agreement provides for the agent to be entitled to commission on the happening of an event whether or not the agent or the client, or both, is or are the effective cause of the happening of the event.
- (4) An agency agreement is a *sole agency agreement* if the agreement provides for the agent to be entitled to commission on the happening of an event (whether or not the agent is the effective cause of the happening of the event) unless the client is the effective cause of the happening of the event.

- (5) The statement under subsection (1) or (2) must follow immediately after the term required by schedule 3, section 3.9 (Remuneration) and be no less prominent than that term.

4.2 Warning about other agency agreements

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

WARNING: Have you signed an agency agreement for the sale of this property with another agent? If you have you may have to pay 2 commissions (if this agreement or the other agreement you have signed is a sole or exclusive agency agreement).

- (2) The warning statement under subsection (1) must follow immediately after the term required by schedule 3, section 3.9 (Remuneration) and be no less prominent than that term.

4.3 Fixed term agency agreements

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

4.4 Price at which property is to be offered

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

4.5 Sales inspection report to form part of agreement

The agreement must include a copy of any sales inspection report prepared by the agent and given to the principal under schedule 8, section 8.21 (Sales inspection report required for property).

Schedule 5 Terms specific to a buyers agent agency agreements

(see s 15)

5.1 Property details

The agreement must include a copy of the statement prepared and given to the principal by the agent for schedule 8, section 8.26 (Statement of property details).

5.2 Purchase price range

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

Schedule 6 Terms specific to agency agreements for sale of rural land

(see s 15)

6.1 Exclusive agency and sole agency agreements

- (1) If the agency agreement is an exclusive agency agreement the agreement must include the following statement:

IMPORTANT: This is an exclusive agency agreement. This means you may have to pay the agent commission even if another agent (or you) sells the property or introduces a buyer who later buys the property.

- (2) If the agency agreement is a sole agency agreement the agreement must include the following statement:

IMPORTANT: This is a sole agency agreement. This means you may have to pay the agent commission even if another agent sells the property or introduces a buyer who later buys the property.

- (3) An agency agreement is an *exclusive agency agreement* if the agreement provides for the agent to be entitled to commission on the happening of an event whether or not the agent or the client, or both, is or are the effective cause of the happening of the event.
- (4) An agency agreement is a *sole agency agreement* if the agreement provides for the agent to be entitled to commission on the happening of an event (whether or not the agent is the effective cause of the happening of the event) unless the client is the effective cause of the happening of the event.

- (5) The statement under subsection (1) or (2) must follow immediately after the term required by schedule 3, section 3.9 (Remuneration) and be no less prominent than that term.

6.2 Warning about other agency agreements

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

WARNING: Have you signed an agency agreement for the sale of this property with another agent? If you have you may have to pay 2 commissions (if this agreement or the other agreement you have signed is a sole or exclusive agency agreement).

- (2) The warning statement under subsection (1) must follow immediately after the term required by schedule 3, section 3.9 (Remuneration) and be no less prominent than that term.

6.3 Price at which property is to be offered

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

6.4 Sales inspection report to form part of agreement

The agreement must include a copy of any sales inspection report prepared by the agent and given to the principal under schedule 8, section 8.21 (Sales inspection report required for property).

Schedule 7 Terms specific to agency agreements for sale of business

(see s 15)

7.1 Meaning of *business* in sch 7

In this schedule:

business includes professional practice.

7.2 Exclusive agency and sole agency agreements

- (1) If the agency agreement is an exclusive agency agreement the agreement must include the following statement:

IMPORTANT: This is an exclusive agency agreement. This means you may have to pay the agent commission even if another agent (or you) sells the business or introduces a buyer who later buys the business.

- (2) If the agency agreement is a sole agency agreement the agreement must include the following statement:

IMPORTANT: This is a sole agency agreement. This means you may have to pay the agent commission even if another agent sells the business or introduces a buyer who later buys the business.

- (3) An agency agreement is an *exclusive agency agreement* if the agreement provides for the agent to be entitled to commission on the happening of an event whether or not the agent or the client, or both, is or are the effective cause of the happening of the event.
- (4) An agency agreement is a *sole agency agreement* if the agreement provides for the agent to be entitled to commission on the happening

of an event (whether or not the agent is the effective cause of the happening of the event) unless the client is the effective cause of the happening of the event.

- (5) The statement under subsection (1) or (2) must follow immediately after the term required by schedule 3, section 3.9 (Remuneration) and be no less prominent than that term.

7.3 Warning about other agency agreements

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

WARNING: Have you signed an agency agreement for the sale of this business with another agent? If you have you may have to pay 2 commissions (if this agreement or the other agreement you have signed is a sole or exclusive agency agreement).

- (2) The warning statement under subsection (1) must follow immediately after the term required by schedule 3, section 3.9 (Remuneration) and be no less prominent than that term.

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

The agreement must include any written confirmation prepared for schedule 8, section 8.60 of any specific instructions given to the agent by the principal before the agreement is entered into about arrangements for the transfer to the purchaser of any liability for the leasing or hire purchase of goodwill, plant, fittings or stock in inventory included in the sale.

7.5 Specific instructions about marketing and inspections

The agreement must include any written confirmation prepared for schedule 8 section 8.60 of any stated instructions given to the agent by the principal before the agreement is entered into about any of the following:

Schedule 7 Terms specific to agency agreements for sale of business

Section 7.5

- (a) the marketing of the business;
- (b) the entitlement of prospective purchasers to inspect the premises of the business and the circumstances under which the inspection can be made;
- (c) the entitlement of prospective purchasers to inspect records, books of account and other documents about the business and the circumstances under which the inspection can be made.

Schedule 8 **Rules of conduct**

(see s 17)

Part 8.1 **Interpretation**

U 8.1 **Definitions for sch 8**

In this schedule:

agent includes a registered salesperson.

property manager means—

- (a) for part 8.2 (General rules applying to all licensees and registered salespeople)—a person employed by an agent in relation to the management of property to which division 8.3.3 or division 8.4.2 applies; and
- (b) for division 8.3.3—a person employed by an agent in relation to the management of property to which that part applies; and
- (c) for division 8.4.2—a person employed by an agent in relation to the management of property to which that part applies.

registered salesperson includes a property manager.

Part 8.2

General rules applying to all licensees and registered salespeople

8.2 Knowledge of Act and other laws

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

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

8.3 Fiduciary obligations

An agent must comply with the fiduciary obligations arising as an agent.

8.4 Honesty, fairness and professionalism

- (1) An agent must act honestly, fairly and professionally with all parties in a transaction.
- (2) An agent must not mislead or deceive any parties in negotiations or a transaction.

8.5 Skill, care and diligence

An agent must exercise reasonable skill, care and diligence.

8.6 High pressure tactics, harassment or unconscionable conduct

An agent must not engage in high pressure tactics, harassment or harsh or unconscionable conduct.

8.7 To act in client's best interests

An agent must act in the client's best interest at all times unless it would be contrary to the Act or otherwise unlawful to do so.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

8.8 Confidentiality

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

- (a) the client or customer consents to the disclosure; or
- (b) the agent is permitted or compelled by law to disclose the information.

8.9 To act in accordance with client authority

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

8.10 To act in accordance with client's instructions

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

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

8.11 Licensee must ensure employees comply with the Act

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

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

8.12 Conflicts of interest

An agent must not accept an appointment to act, or continue to act, as an agent if doing so would place the agent's interests in conflict with the client's interests.

8.13 Referral to service provider

- (1) An agent who refers a principal or prospective buyer to a service provider must not falsely represent to the principal or prospective buyer that the service provider is independent of the agent.
- (2) A service provider is considered to be independent of an agent if—
 - (a) the agent receives no rebate, discount, commission or benefit for referring a client or customer to the service provider; and
 - (b) the agent does not have a personal or commercial relationship with the service provider.

Examples of personal or commercial relationship

- 1 a family relationship
- 2 a business relationship
- 3 a fiduciary relationship

4 a relationship in which 1 person is accustomed, or obliged, to act in accordance with the directions, instructions or wishes of the other person

Note An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) If the service provider is not independent of the agent, the agent must disclose to the principal or prospective buyer—
- (a) the nature of any relationship, whether personal or commercial, the agent has with the service provider; and
 - (b) the nature and value of any rebate, discount, commission or benefit the agent may receive, or expects to receive, by referring the client or customer to the service provider.

8.14 Licensee not to recommend engagement of services of solicitor acting for other party

An agent must not recommend that a principal or prospective buyer engage the services of a solicitor or firm of solicitors, if the agent knows that the solicitor or the firm of solicitors acts or will be acting for the other party to the agreement concerned.

8.15 Inducements

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

8.16 Soliciting through false or misleading advertisements or communications

An agent must not solicit clients or customers by advertisement or other communication that the agent knows or should know are false or misleading.

8.17 Insertion of material particulars in documents

An agent must not give or tender to any person for signature a document, unless at the time of giving or tendering of the document all material particulars have been inserted in the document.

8.18 Representations about Act

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

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

8.19 Agency agreements must comply with regulation

An agent must not enter into an agency agreement unless the agreement complies with any applicable requirements of this regulation, as required by the Act, section 100 (No commission or expenses without agency agreement).

Part 8.3 **Rules specific to real estate agents and registered salespeople they employ**

Division 8.3.1 **Sales**

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

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

8.21 **Sales inspection report required for property**

- (1) On completion of the inspection required by section 8.20, an agent must prepare and give to the principal a sales inspection report for the property.
- (2) The report must be signed by the agent and state the following:
 - (a) the principal's name and address;
 - (b) the date of preparation of the report;
 - (c) the agent's name, business address and telephone number;
 - (d) a description of the property, including the address of the property and any other details that may be necessary to enable the property to be readily identified;
 - (e) a description of any fittings and fixtures that are to be included in the sale of the property;
 - (f) any terms and conditions of sale known to the agent (for example, whether or not vacant possession is to be given);

- (g) the agent's recommendation about the most suitable method of sale of the property;
- (h) the agent's estimate of the selling price (or price range) for the property;
- (i) details of any covenants, easements, defects, government notices or orders affecting the property that are known to the agent;
- (j) details of any special instructions about the marketing and showing of the property;
- (k) the name, business address, telephone number and address for service of documents of the principal's solicitor.

Note An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

8.22 Principal to be informed of an offer

- (1) The agent must tell the principal of all offers of purchase of a property as soon as practicable after receiving the offer until the exchange of contracts for the purchase of the property takes place.
- (2) The agent must tell the principal orally or in writing of each offer and must identify the party who made the offer.
- (3) However, if the principal has instructed the agent in writing not to tell the principal of an offer, the agent must tell the person who made the offer that the principal will not be told about the offer.
- (4) This section does not apply to bids made in the course of an auction.

8.23 Information to be given when expression of interest deposit paid

- (1) When the principal pays an expression of interest deposit (*deposit*) in relation to the proposed purchase of a property before exchange

of contracts for the property, the agent must tell the principal that the vendor has no obligation to sell the property or the purchaser to buy the property.

- (2) The deposit is refundable if a contract for the sale of the property is not entered into.
- (3) The information—
 - (a) must be in writing; and
 - (b) may be given on the receipt issued by the vendor or their agent.
- (4) An agent must promptly tell the principal when the agent becomes aware of any subsequent offers to purchase the property.

8.24 Notifying managing agent of appointment to sell residential property

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

8.25 Licensee must not accept payment for a referral

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

Division 8.3.2 Buyers agents

8.26 Statement of property details

- (1) When entering into an agency agreement with a principal to act as buyer's agent for the principal, an agent must prepare and give the principal a statement of property details.
- (2) The statement must be signed by the agent and state the following:
 - (a) details known to the agent of the type of property to be purchased;

- (b) details of any special instructions about the property to be purchased (for example, for a rented property, an instruction that vacant possession is required).

Note 1 These details can be changed by agreement between the parties or as provided by the agency agreement.

Note 2 An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

8.27 Principal to be informed of negotiations

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

8.28 Licensee to obtain best possible purchase price

An agent is to use the agent's best efforts to get the best possible purchase price, without breaching standards of ethical conduct or engaging in conduct that is contrary to good agency practice.

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

- (1) In negotiations for the purchase of a property, the agent must not exceed the maximum or agreed price fixed by the principal without the express written consent of the principal or a person authorised by the principal.
- (2) When the bidding at an auction exceeds the maximum or agreed price fixed by the principal, the agent must not continue bidding without the express consent of the principal or a person authorised by the principal.

8.30 Information to be given when expression of interest deposit paid

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

8.31 Licensee must not accept payment for a referral

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

U Division 8.3.3 Property management

8.32 Inspection report

- (1) An agent must, as soon as practicable after entering into an agency agreement in relation to the management of property, prepare and give to the principal an inspection report for the property.
- (2) The inspection report must be signed by the licensee and include the following:
 - (a) the name and address of the principal;
 - (b) the address of the property;

- (c) the date of preparation of the report;
- (d) the licensee's name, licence number and business address;
- (e) a description of the exterior and interior condition of the property, including fittings, fixtures, improvements and anything provided with the property;
- (f) details of any work still to be completed by the principal on the property.

8.33 Inspection of property for rent

- (1) An agent must accompany a prospective tenant on an inspection of the property.
- (2) An agent must not give the keys to a property to a prospective tenant, even for a short time.
- (3) Subsections (1) and (2) do not apply if the principal, and, if the property is currently let, the tenant, have otherwise consented in writing.

8.34 Maintenance or repairs of rental property

- (1) An agent managing a rental property must promptly respond to and, subject to the principal's instructions, attend to all requests by a tenant, for maintenance of, or repairs to, the property.
- (2) If the principal has given an instruction that a repair not be carried out, the agent must tell 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.

8.35 Breach of tenancy agreement

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

8.36 Notifying tenant of appointment to sell

- (1) This section applies if an agent managing a rental property is aware that—
 - (a) the property is listed for sale; or
 - (b) a real estate agent has been appointed to act on the sale of the property.
- (2) The agent must immediately give the tenant written notice of—
 - (a) the intended sale of the property; or
 - (b) the appointment of the real estate agent for the sale of the property and the name and contact details of the agent.

8.37 Final inspection of property

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

Example of reasonable steps

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

Note An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

8.38 Obtaining tenant's signature for rental bond refund

An agent must not solicit or obtain the signature of a tenant to any document relating to the refund of a rental bond before the termination of the tenancy, unless the document directs that the bond be repaid in full to the tenant or transferred to another tenancy in accordance with the tenant's directions.

8.39 Cooperation about records, access and transfer

- (1) This section applies if an agent—
 - (a) is acting on behalf of a principal in the management of property; and
 - (b) is advised by another agent that the other agent (the *new agent*) has been engaged to act on behalf of that principal in the management of that property.
- (2) The agent must cooperate with the new agent in relation to access to the records of the principal, including but not limited to—
 - (a) making the records reasonably available (according to law); and
 - (b) facilitating the transfer of management functions between the agent and the new agent.

8.40 Disclosure of potential agency

- (1) This section applies if an agent—
 - (a) intends to act (or offers to act) for a principal in the management of property; and
 - (b) is aware that another agent is or other agents are managing that property for the principal.
- (2) Unless the principal otherwise directs in writing, the agent must disclose their intention to act (or offer to act) to the current agent or agents.

8.41 Confirmation of specific instructions—property management services

- (1) This section applies to an agent before or when entering into an agency agreement under which the agent will provide property management services in relation to the leasing of residential property or rural land.
- (2) The agent must prepare for inclusion in the agency agreement written confirmation of the extent of the agent's authority to undertake the following duties in relation to the management of the property and any limitations on the agent's authority to undertake those duties:
 - (a) obtaining references from prospective tenants, arranging inspections of the property by prospective tenants and choosing a tenant;
 - (b) entering into and signing a tenancy agreement (specifying the term for which the property may be let);
 - (c) undertaking inspections of the property;
 - (d) effecting repairs to and maintaining the property or engaging tradespersons to do so and limitations on expenditure that may be incurred by the agent without obtaining the principal's approval;
 - (e) paying disbursements and expenses incurred in relation to the agent's management of the property;
 - (f) collecting rent;
 - (g) receiving, claiming and disbursing rental bond money;
 - (h) serving notices for breach of the tenancy agreement or to terminate the tenancy agreement;

- (i) undertaking the necessary steps to obtain vacant possession and recover any money owing to the principal in relation to the tenancy of the property;
- (j) representing the principal in any tribunal or court proceedings in relation to the tenancy of the property;
- (k) paying accounts for amounts owing in relation to the property (for example, water rates and charges, council rates, maintenance expenses, and owners corporation levies);
- (l) advertising the property for letting or re-letting;
- (m) reviewing the rent at the end of a tenancy.

Note An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) The written confirmation may be prepared and be included as part of the agency agreement.

8.42 Confirmation of specific instructions—leasing of property

- (1) This section applies to an agent before or when entering into an agency agreement under which the agent will act for the owner or residential property or rural land in relation to the entering into a lease of the residential property or rural land.
- (2) The agent must prepare for inclusion in the agency agreement written confirmation of the extent of the agent's authority to undertake the following duties in relation to the entering into of the lease and any limitations on the agent's authority to undertake those duties:
 - (a) obtaining references from prospective tenants, arranging inspections of the property by prospective tenants and choosing a tenant;
 - (b) entering into and signing a tenancy agreement;

- (c) undertaking an initial inspection of the property;
 - (d) collecting initial rent payment;
 - (e) receiving and disbursing rental bond money;
 - (f) advertising the property for letting.
- (3) The written confirmation may be prepared and be included as part of the agency agreement.

Part 8.4 Rules specific to stock and station agents and registered salespeople they employ

Division 8.4.1 Sales

8.43 Preliminary physical inspection of property to be conducted by agent

- (1) An agent must not act on behalf of a principal in relation to the sale of any property, including livestock included in the sale, unless the agent has conducted a preliminary physical inspection of the property.
- (2) This section does not apply to a sale solely of livestock.

8.44 Sales inspection report required for the property

- (1) On completion of the inspection required by section 8.43, an agent must prepare and give to the principal a sales inspection report for the property.
- (2) The report must be signed by the agent and state the following:
 - (a) the principal's name and address;
 - (b) the date of preparation of the report;
 - (c) the agent's name, business address and telephone number;
 - (d) a description of the property, including the address of the property and any other details that may be necessary to enable the property to be readily identified, and the size of the property in hectares;

- (e) a description of the services provided to the property (for example, power, phone, airstrip, closest schools, mail service, closest rail service);
- (f) information about the type of country (topography, soils, timber, arable area, pasture development), water (irrigation, dams, rainfall) and production capacity;
- (g) a description of any fittings and fixtures that are to be included in the sale of the property;
- (h) a description of items included in the sale such as house, other accommodation, grain storage, woolshed, sheep or cattle yards or plant equipment;
- (i) a description of other items to be included in the sale, such as livestock;
- (j) any terms and conditions of sale known to the agent (for example, whether or not vacant possession is to be given);
- (k) the agent's recommendation about the most suitable method of sale of the property;
- (l) the agent's estimate of the selling price (or price range) for the property;
- (m) details of any covenants, easements, defects, local government notices or orders affecting the property that are known to the agent;
- (n) details of any special instructions about the marketing and showing of the property;
- (o) the name, business address, telephone number and address for service of documents of the principal's solicitor.

Note An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

8.45 Principal to be informed of an offer

- (1) The agent must, tell the principal of all offers of purchase of a property as soon as practicable after receiving the offer up until exchange of contracts takes place.
- (2) However, if the principal has instructed the agent in writing not to tell the principal of an offer, the agent must tell the person who made the offer that the principal will not be told about the offer.
- (3) The agent may tell the principal of an offer in writing and must identify the party who made the offer.
- (4) If the principal is told orally, the agent must confirm the information in writing.
- (5) This section does not apply to bids made in the course of an auction.

8.46 Agent must not accept payment for a referral

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

U Division 8.4.2 Property management

8.47 Inspection report

- (1) An agent must, as soon as practicable after entering into an agency agreement in relation to the management of property, prepare and give to the principal an inspection report for the property.
- (2) The inspection report must be signed by the licensee and state the following:
 - (a) the name and address of the principal;
 - (b) the address of the property;
 - (c) the date of preparation of the report;
 - (d) the licensee's name, licence number and business address;

- (e) a description of the exterior and interior condition of the property, including fittings, fixtures, improvements and anything provided with the property;
- (f) details of any work still to be completed by the principal on the property.

8.48 Inspection of property for rent

- (1) An agent must accompany a prospective tenant on an inspection of the property.
- (2) An agent must not give the keys to a property to a prospective tenant, even for a short time.
- (3) Subsections (1) and (2) do not apply if the principal, and, if the property is currently let, the tenant, have otherwise consented in writing.

8.49 Maintenance or repairs of rental property

- (1) An agent managing a rental property must promptly respond to and, subject to the principal's instructions, attend to all requests by a tenant, for maintenance of, or repairs to, the property.
- (2) If the principal has given an instruction that a repair not be carried out, the agent must tell 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.

8.50 Breach of tenancy agreement

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

8.51 Notifying tenant of appointment to sell

- (1) This section applies if an agent managing a rental property is aware that—
 - (a) the property is listed for sale; or
 - (b) an agent has been appointed to act on the sale of the property.
- (2) The agent must immediately give the tenant written notice of—
 - (a) the intended sale of the property; or
 - (b) the appointment of the agent for the sale of the property and the name and contact details of the agent.

8.52 Final inspection of property

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

Example of reasonable steps

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

Note An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

8.53 Cooperation about records, access and transfer

- (1) This section applies if and agent—
 - (a) is acting on behalf of a principal in the management of property; and
 - (b) is advised by another agent that the other agent (the *new agent*) has been engaged to act on behalf of that principal in the management of that property.

- (2) The agent must cooperate with the new agent in relation to access to the records of the principal, including but not limited to—
 - (a) making the records reasonably available (according to law); and
 - (b) facilitating the transfer of management functions between the agent and the new agent.

8.54 Disclosure of potential agency

- (1) This section applies if an agent—
 - (a) intends to act (or offers to act) for a principal in the management of property; and
 - (b) is aware that another agent is or other agents are managing that property for the principal.
- (2) Unless the principal otherwise directs in writing, the agent must disclose their intention to act (or offer to act) to the current agent or agents.

8.55 Confirmation of specific instructions—property management services

- (1) This section applies to an agent before or when entering into an agency agreement under which the agent will provide property management services in relation to the leasing of residential property or rural land.
- (2) The agent must prepare for inclusion in the agency agreement written confirmation of the extent of the agent's authority to undertake the following duties in relation to the management of the property and any limitations on the agent's authority to undertake those duties:

Schedule 8
Part 8.4
Division 8.4.2

Rules of conduct
Rules specific to stock and station agents and registered salespeople they
Property management

Section 8.55

- (a) obtaining references from prospective tenants, arranging inspections of the property by prospective tenants and choosing a tenant;
- (b) entering into and signing a tenancy agreement (specifying the term for which the property may be let);
- (c) undertaking inspections of the property;
- (d) effecting repairs to and maintaining the property or engaging tradespersons to do so and limitations on expenditure that may be incurred by the agent without obtaining the principal's approval;
- (e) paying disbursements and expenses incurred in relation to the agent's management of the property;
- (f) collecting rent;
- (g) receiving, claiming and disbursing rental bond money;
- (h) serving notices for breach of the tenancy agreement or to terminate the tenancy agreement;
- (i) undertaking the necessary steps to obtain vacant possession and recover any money owing to the principal in relation to the tenancy of the property;
- (j) representing the principal in any tribunal or court proceedings in relation to the tenancy of the property;
- (k) paying accounts for amounts owing in relation to the property (for example, water rates and charges, council rates, maintenance expenses, and owners corporation levies);
- (l) advertising the property for letting or re-letting;

- (m) reviewing the rent at the end of a tenancy.

Note An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) The written confirmation may be prepared and be included as part of the agency agreement.

8.56 Confirmation of specific instructions—leasing of property

- (1) This section applies to an agent before or when entering into an agency agreement under which the agent will act for the owner or residential property or rural land in relation to the entering into a lease of the residential property or rural land.
- (2) The agent must prepare for inclusion in the agency agreement written confirmation of the extent of the agent's authority to undertake the following duties in relation to the entering into of the lease and any limitations on the agent's authority to undertake those duties:
- (a) obtaining references from prospective tenants, arranging inspections of the property by prospective tenants and choosing a tenant;
 - (b) entering into and signing a tenancy agreement;
 - (c) undertaking an initial inspection of the property;
 - (d) collecting initial rent payment;
 - (e) receiving and disbursing rental bond money;
 - (f) advertising the property for letting.
- (3) The written confirmation may be prepared and be included as part of the agency agreement.

Part 8.5 **Rules specific to business agents and registered salespeople they employ**

8.57 **Meaning of *business* in pt 8.5**

In this part:

business includes professional practice.

8.58 **Preliminary physical inspection of business to be conducted by agent**

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

8.59 **Sales inspection report required for business**

- (1) On completion of the inspection required by section 8.58, an agent must prepare and give to the principal a sales inspection report for the business.
- (2) The report must be signed by the agent and state the following:
 - (a) the principal's name and address;
 - (b) the date of preparation of the report;
 - (c) the agent's name, business address and telephone number;
 - (d) a description of the business, including the address of the business and any other details that may be necessary to enable the business to be readily identified, the business name and its ABN;

- (e) a description of inclusions to be included in the sale such as goodwill, plant, fittings and stock in inventory, together with details of any encumbrances affecting those inclusions;
- (f) any terms and conditions of sale known to the agent;
- (g) the agent's recommendation about the most suitable method of sale of the business;
- (h) the agent's estimate of the selling price (or price range) for the business;
- (i) details of any defects, government notices or orders affecting the business that are known to the agent.

8.60 Confirmation of specific instructions

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

8.61 Principal to be informed of an offer

- (1) The agent must tell the principal of all offers of purchase as soon as practicable after receiving the offer up until exchange of contracts takes place.
- (2) However, if the principal has instructed the agent in writing not to tell the principal of an offer, the agent must tell the person who made the offer that the principal will not be told about the offer.
- (3) The agent may tell the principal of an offer in writing and must identify the party by whom the offer is made.
- (4) If the principal is told orally, the agent must confirm the information in writing.
- (5) This section does not apply to bids made in the course of an auction.

8.62 Agent must not accept payment for a referral

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

Dictionary

(see s 3)

Note 1 The Legislation Act contains definitions and other provisions relevant to this regulation.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- ACT
- commissioner for fair trading
- penalty unit (see s 133).

Note 3 Terms used in this regulation have the same meaning that they have in the *Agents Act 2003* (see Legislation Act, s 148). For example, the following terms are defined in the *Agents Act 2003*, dict:

- agency agreement
- agent
- buyer
- employee
- records
- registered
- rural land
- trust account.

agent, for schedule 8 (Rules of conduct)—see schedule 8, section 8.1.

ANTA means the Australian National Training Authority established by the *Australian National Training Authority Act 1992* (Cwth).

business—

- (a) for schedule 7 (Terms specific to agency agreements for sale of business)—see schedule 7, section 7.1; and
- (b) for schedule 8, part 8.5 (Rules specific to business agents and registered salespeople they employ)—see schedule 8, section 8.57.

property manager, for schedule 8 (Rules of conduct)—see schedule 8, section 8.1.

registered salesperson, for schedule 8 (Rules of conduct)—see schedule 8, section 8.1.

registered training organisation—see the *Tertiary Accreditation and Registration Act 2003*, dictionary.

repealed Act means the *Agents Act 1968* (repealed by the *Agents Act 2003*).

statement of attainment—see the *Tertiary Accreditation and Registration Act 2003*, dictionary.

unqualified real estate salesperson means a person—

- (a) to whom the Act, section 49 (1) (a) and (c) applies; and
- (b) who does not have the qualifications prescribed under the Act, section 50.

Note Section 9 prescribes qualifications for registration as a salesperson.

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the Legislation Act, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	par = paragraph/subparagraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	pt = part
exp = expires/expired	r = rule/subrule
Gaz = gazette	renum = renumbered
hdg = heading	reloc = relocated
IA = Interpretation Act 1967	R[X] = Republication No
ins = inserted/added	RI = reissue
LA = Legislation Act 2001	s = section/subsection
LR = legislation register	sch = schedule
LRA = Legislation (Republication) Act 1996	sdiv = subdivision
mod = modified/modification	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

Endnotes

3 Legislation history

3 Legislation history

This regulation was originally the *Agents Regulations 2003*. It was renamed under the *Legislation Act 2001*.

Agents Regulation 2003 SL2003-38

notified LR 31 October 2003

s 1, s 2 commenced 31 October 2003 (LA s 75 (1))

remainder commenced 1 November 2003 (s 2)

as amended by

Justice and Community Safety Legislation Amendment Act 2004 (No 2) A2004-32 pt 3

notified LR 29 June 2004

s 1, s 2 commenced 29 June 2004 (LA s 75 (1))

pt 3 commenced 30 June 2004 (s 2 (1))

Agents Amendment Regulations 2004 (No 1) SL2004-49

notified LR 13 September 2004

s 1, s 2 commenced 13 September 2004 (LA s 75 (1))

remainder commenced 14 September 2004 (s 2)

Statute Law Amendment Act 2005 A2005-20 sch 3 pt 3.2

notified LR 12 May 2005

s 1, s 2 taken to have commenced 8 March 2005 (LA s 75 (2))

sch 3 pt 3.2 commences 2 June 2005 (s 2 (1))

Agents Amendment Regulation 2005 (No 1) SL2005-10

notified LR 27 May 2005

s 1, s 2 commenced 27 May 2005 (LA s 75 (1))

remainder commenced 28 May 2005 (s 2)

4 Amendment history

Name of regulation

s 1 am R4 LA

Commencement

s 2 om LA s 89 (4)

Qualifications for licences—Act s 25

s 6 am A2004-32 s 10; regs renum R2 LA (see A2004-32 s 11)

- Licence conditions—Act s 34 (1) (a)**
s 7A ins SL2004-49 s 4
- Eligibility of unqualified real estate salespeople for registration—Act, s 49 (2)**
s 8A ins SL2004-49 s 5
am A2005-20 amdt 3.9
(3), (4) exp 1 November 2007 (s 8A (4))
- Qualifications for registration as a salesperson—Act s 50**
s 9 am SL2004-49 s 6, s 7
- Registration conditions—Act s 58 (1) (a)**
s 10A ins SL2004-49 s 8
- Transitional provisions**
pt 7 hdg exp 1 June 2006 (s 21)
- Eligibility for registration—unregistered employees before commencement day—Act, s 49 (2)**
s 19 exp 1 June 2006 (s 21)
- Eligibility for registration—new employees on and after commencement day—Act, s 49 (2)**
s 20 exp 1 June 2006 (s 21)
- Eligibility for registration—certain unqualified real estate salespeople—Act, s 49 (2)**
s 20A ins SL2004-49 s 9
am SL2005-10 s 4
exp 1 June 2006 (s 21)
- Expiry of pt 7**
s 21 sub SL2005-10 s 5
exp 1 June 2006 (s 21)
- Terms applying to all agency agreements**
sch 3 ss renum R4 LA
- Terms specific to agency agreements for sale of residential property**
sch 4 ss renum R4 LA
- Terms specific to a buyers agent agency agreements**
sch 5 ss renum R4 LA
- Terms specific to agency agreements for sale of rural land**
sch 6 ss renum R4 LA
- Terms specific to agency agreements for sale of business**
sch 7 ss renum R4 LA
- Rules of conduct**
sch 8 ss renum R4 LA

Endnotes

5 Earlier republications

Definitions for sch 8

s 8.1 def *property manager* sub A2005-20 amdt 3.10

Property management—real estate agents

div 8.3.3 hdg sub A2005-20 amdt 3.11

Property management—stock and station agents

div 8.4.2 hdg sub A2005-20 amdt 3.12

Dictionary

dict def *unqualified real estate salesperson* ins SL2004-49 s 10

5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No and date	Effective	Last amendment made by	Republication for
R1 1 Nov 2003	1 Nov 2003– 29 June 2004	not amended	new regulation
R2 30 June 2004	30 June 2004– 13 Sept 2004	A2004-32	amendments by A2004-32
R3 14 Sept 2004	14 Sept 2004– 3 Nov 2004	SL2004-49	amendments by SL2004-49
R4 4 Nov 2004	4 Nov 2004– 27 May 2005	SL2004-49	editorial amendments under Legislation Act

6 Uncommenced amendments

The following amendments have not been included in this republication because they were uncommenced at the republication date:

Statute Law Amendment Act 2005 A2005-20 sch 3 pt 3.2

Part 3.2 Agents Regulation 2003

[3.9] New section 8A (4)

insert

- (4) Subsection (3) and this subsection expire on 1 November 2007.

Explanatory note

This amendment expires section 8A (3). The sections to which section 8A (3) apply all expire by 1 November 2007.

[3.10] Section 8.1, definition of *property manager*

substitute

property manager means—

- (a) for part 8.2 (General rules applying to all licensees and registered salespeople)—a person employed by an agent in relation to the management of property to which division 8.3.3 or division 8.4.2 applies; and
- (b) for division 8.3.3 (Property management—real estate agents)—a person employed by an agent in relation to the management of property to which the division applies; and
- (c) for division 8.4.2 (Property management—stock and station agents)—a person employed by an agent in relation to the management of property to which the division applies.

Explanatory note

This amendment corrects the references to ‘this part’ in paragraphs (b) and (c) of the definition to ‘this division’.

Endnotes

6 Uncommenced amendments

[3.11] Division 8.3.3 heading

substitute

Division 8.3.3 Property management—real estate agents

Explanatory note

This amendment revises the heading to more accurately reflect the division's application.

[3.12] Division 8.4.2 heading

substitute

Division 8.4.2 Property management—stock and station agents

Explanatory note

This amendment revises the heading to more accurately reflect the division's application.

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