



THE LAW SOCIETY
OF NEW SOUTH WALES

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24 June 2022

Property and Stock Agents Regulation 2022
Policy and Strategy, Better Regulation Division
NSW Department of Customer Service
4 Parramatta Square
12 Darcy Street
PARRAMATTA NSW 2150

By email: psareg@customerservice.nsw.gov.au

Dear Sir/Madam,

Public consultation on proposed Property and Stock Agents Regulation 2022

The Law Society of NSW welcomes the opportunity to provide feedback on the proposed Property and Stock Agents Regulation 2022 ("Regulation"). The Law Society's Property Law Committee has contributed to this submission. Our submission focuses on three aspects of the proposed Regulation that are relevant to solicitors and their clients.

1. Section 4(2) definition of "major property holding"

We note that clause 4(2) of the *Property and Stock Agents Regulation 2014* was introduced in March 2020. The clause effectively deregulates commercial property agency work where the principal owns a "major property holding" defined as, property that has:

- (a) an aggregate market value of \$40,000,000 or more, or
- (b) an aggregate gross floor area of 20,000 square metres or more.

The rationale for this change in 2020 appears to have been that such principals are assumed to have sufficient resources and commercial expertise that they do not require the same level of consumer protection as less resourced and experienced parties.

The draft Regulation now proposes to halve each threshold to \$20,000,000 and 10,000 square metres respectively. We oppose this proposal. While principals with a "major property holding" (however defined) may have sufficient resources and expertise to protect their interests, third parties (purchasers and especially tenants) may not be as well-resourced and experienced. In our view, the fact that the principal has a major property holding is not relevant to whether or not a third party should have the consumer protections afforded by dealing with a licensed real estate agent. We oppose lowering the thresholds as this will further deregulate commercial property work, reducing the consumer protections afforded to third parties.

2. Section 47 Disclosure of material facts—residential tenancy agreements—the Act, s 4

We support new section 47 of the proposed Regulation, which provides much needed clarification about the obligations to disclose material facts in the residential tenancies context by exempting real estate agents and assistant real estate agents from the obligations under section 52(1)(b) of the *Property and Stock Agents Act 2002* (“Act”) in relation to entering into residential tenancy agreements.

As section 52 of the Act is framed broadly in terms of entering into “any contract or arrangement”, it arguably applies to entering into residential tenancy agreements, overlapping with the specific obligations to disclose material facts in the context of residential tenancies in clause 8(1) of the *Residential Tenancies Regulation 2019*. The amendment therefore clarifies that the only regulatory source of obligations to disclose material facts in the context of residential tenancies is that set out in clause 8(1) of the *Residential Tenancies Regulation 2019*. Accordingly, in answer to question 3 of the Regulatory Impact Statement, the exemption is appropriate in our view, and it should decrease the regulatory burden on real estate agents.

3. Expression of interest deposits – clauses 6 and 16 of Schedule 2 (real estate agents) and clause 4 of Schedule 3 (stock and station agents)

We note that the obligations on an agent accepting an expression of interest deposit have been expanded to include a requirement that the agent obtain from the payee a signed acknowledgement of the information provided about expression of interest deposits. The change is an important consumer protection enhancement and is supported.

Any questions in relation to this letter should be directed to Gabrielle Lea, Policy Lawyer on (02) 9926 0375 or email: gabrielle.lea@lawsociety.com.au.

Yours faithfully,



Joanne van der Plaat
President