

Property Occupations Regulation 2014

Explanatory notes for SL 2014 No. 251

made under the

Property Occupations Act 2014

General Outline

Short title

Property Occupations Regulation 2014

Authorising law

Section 38 of the *Chemical Usage (Agricultural and Veterinary) Control Act 1988*

Section 715 of the *Legal Profession Act 2007*

Section 809 of the *Police Powers and Responsibilities Act 2000*

Section 236 of the *Property Occupations Act 2014*

Section 184 of the *Queensland Civil and Administrative Tribunal 2009*

Section 48 of the *Stock Act 1915*

Policy objectives and the reasons for them

The policy objectives of the *Property Occupations Regulation 2014* (the Regulation) and the reasons for the policy objectives are to:

1. Support the repeal of the *Property Agents and Motor Dealers Act 2000* (PAMD Act) and regulations by prescribing by regulation particular matters provided for in the *Property Occupations Act 2014* (the Act).
2. Reduce red tape and regulation by removing unnecessary legislative obligations, without introducing significant adverse impacts to consumers.
3. Incorporate necessary provisions relating to the regulation of property occupations that are contained within the *Property Agents and Motor Dealers (Auctioneering Practice Code of Conduct) Regulation 2001*, *Property Agents and Motor Dealers (Real Estate Agency Practice Code of Conduct) Regulation 2001* and *Property Agents and Motor Dealers (Restricted Letting Agency Practice Code of Conduct) Regulation 2001* (the Codes of Conduct Regulations), and the

Property Agents and Motor Dealers Regulation 2001 (together the PAMD Act Regulations).

4. Prescribe particular limited licences under the Act, consistent with the limited licences provided for in the *Property Agents and Motor Dealers Regulation 2001*.
5. Provide the total gross floor area and total estimated value of large scale non-residential property transactions or holdings that will result in the exemption provided for in *section 8* of the Act applying.
6. Prescribe the statement that must be included on particular listings for properties for sale published with an electronic listings provider.
7. Provide for the fees payable under the Act as well as the fee discounts and refunds that may be afforded to persons in particular circumstances.
8. Prescribe how a refund may be provided to property developers who are no longer required to hold a licence and to property developer salespersons in particular circumstances.
9. Improve the operation of existing legislative requirements by clarifying particular provisions.
10. Make necessary consequential amendments to subordinate legislation.

Achievement of policy objectives

Supporting the split of the PAMD Act and regulations

The first policy objective will be achieved when the Regulation has been made and both the Act (which repeals the PAMD Act and therefore the related subordinate legislation) and the Regulation commence on the same date.

Reducing red tape and regulation

The second policy objective, to reduce red tape and regulation, is achieved by not re-making a number of the existing provisions of the PAMD Act Regulations. More specifically, the following provisions of the *Property Agents and Motor Dealers Regulation 2001* relevant to property related occupations have not been incorporated into the Regulation and will not be remade:

- *section 3 Applications for licence or registration—photograph*
- *section 6 Commissions*
- *section 7 Educational and other qualifications for licence—Act, ss 35, 36, 41 and 44*
- *section 8 Period of employment for licence*
- *section 9 Application for renewal or restoration of licence*
- *section 10 Display of licence*

- *section 13(2) and (3) Display and publication of licensee's name*
- *section 14 Educational or other qualifications for registration as a registered employee—Act, s 90*
- *section 15 Employee particulars for employment register*
- *section 16 Form of employment register*
- *section 17 Appointment of resident letting agent, real estate agent or pastoral house*
- *section 18 Appointment of auctioneer*

This is largely a consequence of amendments provided for in the Act which removed the head of power to prescribe a number of the matters listed above by regulation. The repeal of these provisions will reduce the legislative burden currently imposed on stakeholders, without introducing significant adverse impacts to stakeholders.

In addition to reducing red tape by not remaking a number of the existing provisions of the *Property Agents and Motor Dealers Regulation 2001*, the Regulation includes minor changes that aim to ensure the legislative obligations provided for in the Regulation do not hinder or adversely impact on auctioneers conducting online auctions of property.

With technological advancements there has been a shift within industries to using an online auction platform at times, rather than strictly conducting the traditional in-person style of auction. Generally speaking, the amendments provided for in the Regulation remove requirements that do not necessarily provide significant benefits to stakeholders but are difficult for auctioneers conducting auctions online to comply with. This includes amendments to remove obligations such as those which relate to the display of particular prescribed information in a specified font size at the place of an auction.

Incorporating necessary provisions of the PAMD Act Regulations

The third policy objective, to incorporate necessary provisions of the existing Codes of Conduct Regulations, is achieved by continuing to impose (in Part 5 of the Regulation) the following conduct related obligations on property agents, resident letting agents, and employees of real estate agents:

- a property agent, resident letting agent, or real estate salesperson must not act for a client if there is a conflict of duty or interest;
- a property agent, resident letting agent, or real estate salesperson must take reasonable steps to find out or verify the property's ownership and property description before selling, leasing or exchanging a property;
- a property agent or real estate salesperson must verify facts material to the sale of property to avoid error, omission, exaggeration or misrepresentation of the property by the agent;
- a property agent or resident letting agent must take reasonable steps to find out whether the client has already appointed another agent to perform the service;
- an auctioneer must keep a register containing particular information in relation to each bidder for an auction;
- an auctioneer must announce to the other bidders that the bid is made by the seller;

- an auctioneer must not disclose the identity of a bidder registered by the auctioneer;
- a property agent or resident letting agent must act in accordance with their client's instructions; and
- an auctioneer must keep at the auctioneer's registered office, an auction contract book containing particular information.

The following provisions of the *Property Agents and Motor Dealers Regulation 2001*, are also considered necessary for the effective and efficient operation of the legislation and therefore they have also been remade, subject to minor amendments, in the Regulation:

- prescribed changes in licensees' or real estate salespersons' circumstances to be notified to the chief executive (as provided for in clauses 5 and 6 of the Regulation);
- disclosure requirements relating to the buyer's premium for the sale of goods at auction (as provided for in clause 7 of the Regulation);
- the keeping of particular information in an auction contract book (as provided for in clause 11 of the Regulation);
- particular requirements for the sale of goods and the sale of livestock by auctioneers (as provided for in clauses 12 and 13 of the Regulation, which are necessary as an auctioneer's licence under the Act authorises a licensee to sell goods by way of auction if the sale or resale is directly connected with a sale by auction of a place of residence or land);
- the keeping of documents (clause 15 of the Regulation); and
- the keeping of documents in electronic form (refer to clause 16 of the Regulation).

Prescribing limited licences

The fourth policy objective, to prescribe particular limited licences, is achieved by prescribing a limited real estate agent's licence (business letting) in clause 3 and a limited real estate agent's licence (affordable housing) in clause 4 of the Regulation.

More specifically, consistent with the *Property Agents and Motor Dealers Regulation 2001*, a limited real estate agent's licence (business letting) limits the activities that may be performed under the licence to the following activities:

- a. to let businesses or interests in businesses;
- b. to collect rents; and
- c. to negotiate for the letting of businesses or interests in businesses.

The activities that may be performed under a limited real estate agent's licence (affordable housing) are limited to the following activities performed under an affordable housing rental scheme:

- a. letting places of residence;
- b. collecting rents; and
- c. negotiating for the letting of places of residence.

In addition, consistent with the status quo, only the following persons may hold a limited real estate agent's licence (affordable housing):

- a. a person who is a director of an approved non-profit corporation; and

- b. a person who is in charge of an approved non-profit corporation's business at its place of business.

While in effect these provisions will maintain the status quo, the drafting approach taken under the Act and the Regulation differs from that of the PAMD Act and the PAMD Act Regulations to take into account current Queensland drafting practice.

Prescribing the total gross floor area and total estimated value for the large scale non-residential property transactions or holdings exemption

The fifth policy objective, to provide the total gross floor area and total estimated value of large scale property transactions or holdings is achieved by, for the purposes of section 8 of the Act, setting the total gross floor area at 10,000 square metres and the total estimated value at \$10,000,000.

The prescribed thresholds are consistent with the recommendations made in the Commonwealth's Decision Regulation Impact Statement 'Proposal for national licensing of the property occupations' (National RIS). The National RIS considered the prescribed monetary value of at least \$10 million and the prescribed area of 10,000 square metres to be appropriate base points for the exemption to apply. The National RIS further considered that the impact of removing licensing for these types of transactions would be minimal, given the small number of transactions over the proposed threshold levels.

Prescribing the statement for particular properties listed with electronic listings provider

The sixth policy objective, prescribing the statement for particular properties listed with an electronic listings provider, is provided for in clause 10 of the Regulation. As provided for in sections 214(5)(b) and 216(5)(b) of the Act, a property agent does not contravene the provision of the Act which provides that the property agent must not disclose to a person a price guide for an offered property if, amongst other requirements, the following statement is included on an electronic listings provider's listing of the property:

'This property is being sold by auction or without a price and therefore a price guide can not be provided. The website may have filtered the property into a price bracket for website functionality purposes.'

Providing for the fees payable under the Act as well as the fee discounts and refunds that may be afforded to persons in particular circumstances

Importantly, the Regulation also maintains the status quo with respect to the fee regime and fees charged under the PAMD Act Regulations, including for example the fees charged for the issue and renewal of a licence or registration certificate. The fees are provided for in Schedule 1 of the Regulation.

The circumstances under which a fee concession may be provided and how they are calculated are provided for in Part 7, Division 2. Generally speaking, the fee discounts provided for in the Regulation are consistent with the fee concessions

provided for in the *Property Agents and Motor Dealers Regulation 2001*. A fee discount may be provided to a person in the following circumstances:

- if a person makes multiple applications for a licence under the Act or an Agents Act (an Agents Act is defined in the Act as the *Debt Collectors (Field Agents and Collection Agents) Act 2014*, or the *Motor Dealers and Chattel Auctioneers Act 2014*);
- if an applicant holds 1 or more licences under the Act or an Agents Act; and
- if a person is renewing 1 or more licences under the Act or an Agents Act.

The Regulation also provides auctioneers and chattel auctioneers with a further fee concession. More specifically, people that wish to hold both an auctioneer's licence under the Act and a chattel auctioneer's licence under the *Motor Dealers and Chattel Auctioneers Act 2014* are only required to pay one licence application fee and one licence issue fee to hold both licences. This approach is intended to mitigate any potential adverse impacts on auctioneers with the split of auctioneering functions along industry lines in two separate Acts.

With respect to refunds, generally speaking the Regulation also maintains the status quo with the refund provisions of the *Property Agents and Motor Dealers Regulation 2001*. Part 7, Division 3 of the Regulation provides that a refund must be provided:

- to an applicant when their application for a licence has been withdrawn or when the chief executive has refused to issue the licence to the applicant;
- when a licence is surrendered if the term of the licence was for more than 1 year and the licence is surrendered before the term expires, unless if the person surrendering the licence continues to hold, at the time of surrender, 1 or more additional licences under the Act or an Agents Act and received a discount in relation to any of the licences. The way in which the refund is to be calculated in this circumstance is provided for in clause 40(3) of the Regulation;
- if the chief executive issues or renews a licence for a shorter term under Part 6 of the Regulation. The way in which the refund is to be calculated in this circumstance is provided for in clause 41(2) of the Regulation;
- when an application for registration as a real estate salesperson has been withdrawn or refused;
- when a real estate salesperson surrenders their registration certificate. The way in which the refund is to be calculated in this circumstance is provided for in clause 43(2) of the Regulation.

To remove doubt, clause 44 of the Regulation declares that no refund is payable in particular circumstances. Generally speaking, the circumstances under which no refund is payable are consistent with the status quo and the provisions of the *Property Agents and Motor Dealers Regulation 2001*. However, to clarify the policy intention of the legislation, the provision has also been amended to remove any doubt with respect to registration restoration fees by declaring that no refund is payable for a registration restoration fee.

Providing refunds to property developers and property developer salespersons

The Regulation includes two transitional provisions which are a necessary consequence of the amendments provided for in the Act that de-licence property developers (as defined by the PAMD Act) and no longer require property developer salespersons (as defined by the PAMD Act) to hold a registration certificate when performing the functions of a property developer salesperson.

As a consequence of property developers being de-licensed the Regulation provides that existing property developer licence holders will receive a refund for the unexpired whole months of their existing licence upon the commencement of the new legislation. This is because property developers will not transition to a new licence category under the Act.

With respect to existing property developer salespersons, under the Act, property developer salespersons will automatically transition to the real estate salesperson category of registration certificate when the new legislation commences. This will allow property developer salespersons to continue working as an employee of a real estate agent in the property industry if they wish to do so, without having to undertake any additional training requirements to be considered eligible to be a real estate salesperson. However, some existing property developer salespersons may choose to surrender their registration certificate upon commencement of the new legislation and in this circumstance, the transitional provisions of the Regulation ensure that these persons may be provided with an appropriate refund for the unexpired whole months of their registration certificate.

Improving the operation of the legislation

The eighth policy objective, to improve the operation of the existing provisions that are being retained in the Regulation, is achieved by making provisions which clarify that, when a person holds more than one type of licence, the licence term of the second licence may be shortened so that both licences will expire on the same day (as provided for in Part 6 of the Regulation). This approach, which is consistent with the status quo and operational procedures of the Office of Fair Trading, reduces red tape for industry and government as it saves time and costs by allowing licence renewal applications to be processed more efficiently.

To improve the operation of the legislation, clause 41 clarifies how a refund may be provided to persons whom have their licence shortened in the above circumstances. Again, this approach and the calculation of the refund is consistent with the status quo and operational procedures of the Office of Fair Trading. The amendment ensures the provisions of the Regulation that relate to refunds are more explicit and clear than those currently provided for in the *Property Agents and Motor Dealers Regulation 2001*.

Making necessary consequential amendments to subordinate legislation

Schedule 2 of the Regulation makes consequential amendments to subordinate legislation by replacing references to provisions of the PAMD Act with cross references to the relevant section of the Act, the *Motor Dealers and Chattel Auctioneers Act 2014*, *Debt Collectors (Field Agents and Collection Agents) Act 2014* and the *Agents Financial Administration Act 2014* where necessary.

Consistency with policy objectives of authorising law

The Regulation is consistent with the main objects of the Act, which are:

- a. to provide a system for licensing and regulating persons as property agents or resident letting agents and for registering and regulating persons as real estate salespersons that achieves an appropriate balance between:
 - i. the need to regulate for the protection of consumers; and
 - ii. the need to promote freedom of enterprise in the market place; and
- b. to provide a way of protecting consumers against particular undesirable practices associated with the promotion of residential property.

Provisions of the Regulation are also consistent with the relevant regulation making power provided for in the Act.

Inconsistency with policy objectives of other legislation

The Regulation is not inconsistent with the policy objectives of other legislation.

Benefits and costs of implementation

Stakeholders will benefit from this Regulation as, consistent with the Act, it contains significantly less legislative obligations compared to the existing PAMD Act Regulations. The implementation costs associated with this Regulation are consistent with those which are associated with the repeal and replacement of the PAMD Act with three industry specific Acts and one common Act that provides for an agent's financial administration obligations.

Consistency with fundamental legislative principles

The Regulation is generally consistent with fundamental legislative principles.

The provisions which will, consistent with status quo, clarify that when a person holds more than one type of licence, the licence term of the second licence may be shortened so that both licences will expire on the same day, may be considered an inappropriate delegation of administrative power.

The possible breach is justified as it is necessary to provide administrative flexibility for the benefit of licensees that hold more than one type of licence. Stakeholders will benefit from a reduction in red tape and a savings in the time associated with

potentially being required to renew multiple licences at different times through separate renewal processes.

Allowing the chief executive to shorten a licence term in the circumstances provided for in the legislation will ensure licence renewal applications can be processed more efficiently and will benefit stakeholders.

Consultation

The majority of the provisions of the Regulation are consistent with the existing provisions of the PAMD Act Regulations. Notably, a large number of provisions of the existing PAMD Act Regulations have not been incorporated into the Regulation, consistent with the policy changes that were provided for in the Act. As such, stakeholders will benefit from this significant reduction in legislative obligations and red tape. The supported recommendations that were relevant to the provisions of the regulations made under the PAMD Act have been incorporated into the Regulation.

Targeted consultation with key stakeholders including the Real Estate Institute of Queensland, the Queensland Law Society, the Shopping Centre Council of Australia, the Australian Livestock and Property Agents Association Limited, the Australian Resident Accommodation Managers Association Incorporated, and the Auctioneers and Valuers Association of Australia Incorporated on a draft of the Regulation was conducted in July 2014.

Generally speaking, stakeholders were supportive of the provisions of the Regulation. However, amendments were made to the draft Regulation to improve the operation of the legislation and implement particular stakeholder recommendations that were raised during the consultation process.

The targeted consultation process highlighted that some stakeholders continue to hold competing views about the appropriateness of prescribing a monetary threshold to provide large scale non-residential property transactions or holdings with an exemption from the Act. On balance, the prescribed thresholds were considered appropriate including because the thresholds are consistent with the recommendations of the National RIS and only a small number of very large transactions involving sophisticated parties will be afforded the exemption from the Act as a result of prescribing a monetary threshold of \$10,000,000.