

New Strata Laws for 2024 | Still in Parliament

Strata Managing Agents Legislation Amendment Bill 2024 Reference Guide

Following on from the recent spotlight from media on the conduct of strata managing agents, on Wednesday 14th August 2024 Parliament tabled the Strata Managing Agents Legislation Amendment Bill 2024 (Bill).

The Bill proposes amendments to:

1. The Strata Schemes Management Act 2015 and associated Strata Schemes Management Regulation 2016;
2. The Community Land Management Act 2021 and associated Community Land Management Regulation 2021; and
3. The Property and Stock Agents Act 2002 and Property and Stock Agents Regulation 2022.

The amendments are primarily directed towards addressing potential conflicts of interest and the adequacy of disclosures by managing agents to owners corporations.

The amendments to the Community Land Management Act 2021 and Community Land Management Regulations 2021 are effectively identical to the Strata Legislation, and have not been extracted below in the interests of brevity.

There are a substantial number of changes to the current legislation, and the below reference guide has been prepared to assist in understanding how the changes affect the current arrangement.

Managing Agents, it is imperative that you begin taking steps to implement the new proposed requirements under these amendments. The bill has passed the Legislative Assembly and is awaiting consideration by the Legislative Council. The bill is stated to commence on proclamation, however there is no indication as to when exactly this will be, and but it is likely to be in near future. Given the substantial disclosure requirements required, it would be prudent to begin the process now in so far as you are able.

Section 57 Disclosure and Authorisation of Commissions and Training

Currently under this section:

A strata manager is prohibited from requesting or accepting a gift or other benefit for himself, or herself, or for another person unless:

1. That remuneration is paid by an owners corporation (OC).



T: (02) 9929 0226 M: 0403 738 996 ABN: 61 649 876 437
E: dbannerman@bannermans.com.au W: www.bannermans.com.au
P: PO Box 514 NORTH SYDNEY NSW 2059 AUSTRALIA

Liability limited by a scheme approved under Professional Standards Legislation

2. The monetary commission was permitted under the terms of the agency agreement, or has otherwise been approved by the OC.
3. The training or service related to strata management functions and was permitted under the terms of the agency agreement or has otherwise been approved by the OC.
4. The gift or benefit has a value less than the amount prescribed in the regulations (currently \$60).

What do the changes do?

1. Requiring the approval of the owners corporation to any commissions or training by (ordinary) resolution at a general meeting.
2. Specifying the requirement for detail to be provided with the motion to approve in relation to commissions and training to ensure that they inform each owners corporation of the:
 - a. Amount of any commission and how it is calculated.
 - b. The monetary value of any training or if not known an estimate.
 - c. The nature of the relationship between the managing agent and the person providing the commission or training.
 - d. Why the commission or training is in that OC's best interests.
 - e. Confirmation that accepting the gift or benefit does not breach their obligations under the Property and Stock Agents Regulation 2022 Schedule 1, section 11 (relating to Conflicts of Interest).
3. Increasing the penalties for non-compliances with this section of the SSMA.

Section 60 Disclosure of commissions and training services

Currently under this section:

Reporting

A managing agent is obliged to report at each Annual General Meeting:

1. Whether any commissions or training services in connection with the exercise by the agent of the functions of that scheme have been provided to or paid for the agent (other than by the OC) in the preceding 12 months as well as particulars of that commission or training service.
2. Any commission or training service and the estimated value of the commission or training service that the agent believes is likely to be provided to or paid for the agent in the following 12 months.

Updating

A managing agent must:



T: (02) 9929 0226 M: 0403 738 996 ABN: 61 649 876 437
E: dbannerman@bannermans.com.au W: www.bannermans.com.au
P: PO Box 514 NORTH SYDNEY NSW 2059 AUSTRALIA

Liability limited by a scheme approved under Professional Standards Legislation

3. Update the strata committee as soon as practicable after becoming aware that commissions or training services provided to or paid for the agent differ from the commissions or training services or any estimate of then, disclosed at the annual general meeting.
4. This disclosure must detail the variation and an explanation for why it occurred.

Tribunal Enforcement

5. The Tribunal may, on application by an owners corporation, order a managing agent to pay to the owners corporation:
 - a. The whole or part of the amount or value of any commissions or training services provided to or paid for the agent and not disclosed in accordance with this section; or
 - b. The whole or part of the amount or value of any commissions or training services provided to or paid for the agent, where there has been a disclosure, but the tribunal determines that the disclosure was not made in good faith, and either the kind, or amount disclosed was not accurate.

What do the changes do?

1. The title for this section is being renamed “60 Disclosure by strata managing agents” to reflect its broadening scope (detailed below).

Reporting

2. Expanding on the report to owners, by including a requirement to disclose whether, during the preceding 12 months:
 - a. A supplier of goods or services for the strata scheme has become connected with the managing agent.
 - b. An original owner of the scheme has become connected with the managing agent.
3. The report must now also confirm:
 - a. Any suppliers of goods and services that are connected with the agent.
 - b. The original owners of the scheme who are connected to the agent.
 - c. Details of the nature and relationship between the agent and the supplier or original owner.
 - d. Details of the goods and services provided by the supplier.

Notice

4. There is now a new requirement for the managing agent to give written notice to the owners corporation before entering into a contract for the purchase of goods or services if:
 - a. A commission or training services of the kind referred to in section 57(3)(b) or (c) may be provided or paid to the managing agent; and/or



- b. The contract is with a person connected with the managing agent.
5. The notice must contain the following details:
- a. The specific provision of the terms of appointment of the agent, if relevant, that demonstrates that it is permitted for the managing agent to obtain the payment of the commission, or provision of the training service.
 - b. Details of the commission or training service, including:
 - i. The amount of commission and the method of its calculation; and
 - ii. the monetary value of the training, or if not known an estimate.
 - c. Details of the nature of the relationship between the managing agent and the person providing the commission or training.
 - d. Details of why the commission or training is in the OC's best interest.
6. A statement confirming that the managing agent believes accepting the gift or benefit does not breach their obligations under the Property and Stock Agents Regulation 2022 Schedule 1, section 11 (relating to Conflicts of Interest).

Updating

7. The strata managing agent is required to provide written notice to the owners corporation as soon as practicable after becoming aware that:
- a. a supplier of goods or services *becomes* connected with the agent.
 - b. the original owner of the strata scheme *becomes* connected with the agent.
 - c. the agent acquires a direct or indirect pecuniary interest in the strata scheme.
8. The written notice must include:
- a. Details of the relationship between the agent and the supplier or original owner; and
 - b. Specify what goods and services are provided by the supplier.

Tribunal Enforcement

9. The Secretary (Commissioner for Fair Trading, Department of Customer Service/ or if no Commissioner The Secretary of the Department), is also now able to apply to the tribunal for an order under section 60(3).

Penalties

10. There has been an increase in the applicable penalty:



T: (02) 9929 0226 M: 0403 738 996 ABN: 61 649 876 437
E: dbannerman@bannermans.com.au W: www.bannermans.com.au
P: PO Box 514 NORTH SYDNEY NSW 2059 AUSTRALIA

Liability limited by a scheme approved under Professional Standards Legislation

- a. from 100 penalty units for a corporation to 500 penalty units.
- b. from 50 penalty units otherwise to 100 penalty units.

71 Interests must be disclosed by potential strata managing agents or building managers

Currently under this section:

A person appointed as the strata managing agent or building manager for a strata scheme who has an interest that must be disclosed under this section must disclose the interest to the owners corporation before the appointment of the person.

Maximum penalty—50 penalty units.

The following are interests that must be disclosed to the owners corporation by a person—

- (a) that the person is connected with the original owner; and
- (b) any direct or indirect pecuniary interest in the strata scheme (other than an interest arising only from the prospective appointment).

What do the changes do?

1. Inserted additional requirements in relation to disclosures:
 - a. that the person is connected with another person who routinely supplies goods or services for other strata schemes for which the person is the strata managing agent, and
 - b. that the person gave advice, whether under a formal contract or not, to the original owner during the previous 2 years about the strata plan or another strata plan or a community plan, and
 - c. another interest prescribed by the regulations.
2. This amendment also specifies the form requirements of such a disclosure, including that it:
 - a. Is in writing; and
 - b. In relation to a supplier,
 - i. details about the nature of the relationship; and
 - ii. details about the goods and services provided by the supplier.

Penalties

3. There has been an increase in the applicable penalty:
 - a. from 100 penalty units for a corporation to 500 penalty units.
 - b. from 50 penalty units otherwise to 100 penalty units.



T: (02) 9929 0226 M: 0403 738 996 ABN: 61 649 876 437
E: dbannerman@bannermans.com.au W: www.bannermans.com.au
P: PO Box 514 NORTH SYDNEY NSW 2059 AUSTRALIA

Liability limited by a scheme approved under Professional Standards Legislation

72 Strata managing agent and building manager agreements may be terminated or varied by Tribunal

Amendment to change the relevant section cross-referred to from 57(2) to 58(2).

166 Strata managing agent to obtain insurance quotations

Currently under this section:

A strata managing agent must provide the owners corporation with not less than 3 quotations from different providers for each type of insurance proposed by the agent to the owners corporation or provide written reasons to the owners corporation if less than 3 quotations are provided.

What do the changes do?

1. Inserts a requirement for insurance quotations to include specific information, including:
 - a. a breakdown of charges, including:
 - i. Base premium amount.
 - ii. Commission (other than broker fee).
 - iii. The broker fee expressed as a percentage of the base premium.
 - iv. Stamp duty.
 - v. Levy amounts.
 - vi. Underwriting agency fees.
 - vii. GST.
 - viii. Any other amounts or percentages relating to the charges prescribed by the regulations.
 - b. the persons to whom the commission and broker fee will ultimately be paid; and
 - c. a statement regarding whether the person providing the quotation is connected with the agent.
2. The strata managing agent must provide the owners corporation with the insurance quotations or written reasons as soon as practicable.
3. There has been a penalty:
 - a. 500 penalty units for a corporation.
 - b. 100 penalty units otherwise.

Schedule 1 clause 25 Rights of proxies and limits on votes by proxies

Currently under this Clause:

Relevantly subclauses 7 and 8 state:

- 7) Limits on exercise of proxy by building manager, on-site residential property manager or strata managing agent A vote by a proxy who is a building manager, an on-site residential property manager or a strata managing agent is invalid if it would obtain or assist in obtaining a pecuniary interest for, or confer or assist in conferring any other material benefit on, the proxy.



T: (02) 9929 0226 M: 0403 738 996 ABN: 61 649 876 437
E: dbannerman@bannermans.com.au W: www.bannermans.com.au
P: PO Box 514 NORTH SYDNEY NSW 2059 AUSTRALIA

Liability limited by a scheme approved under Professional Standards Legislation

- 8) For the purposes of subclause (7), material benefit includes, but is not limited to, the following—
- (a) an extension of the term or an additional term of appointment of the proxy as building manager, on-site residential property manager or strata managing agent,
 - (b) an increase in the remuneration of the proxy,
 - (c) a decision of the owners corporation not to proceed with, to withdraw, to delay, to compromise or to settle litigation or other legal proceedings relating to the proxy,
 - (d) any other decision of the owners corporation that affects litigation or other legal proceedings relating to the proxy.

What do the changes do?

Insert a new subclause (b1) after clause 25(8)(b) to add to the limits on voting by proxy by building managers, on-site residential property managers and strata managing agents to matters where 57(3)(b) or (c) would apply – i.e. when the OC is approving by ordinary resolution:

- (b) a monetary commission provided to a strata managing agent,
- (c) a training service provided to, or paid for, a strata managing agent,

Amendment to the Strata Schemes Management Regulation 2016

Regulation 62 Connected Person

Currently under this regulation:

1. a person that is a corporation (the principal person) is connected with another person if the other person—
 - (a) is a related body corporate or an associated entity (within the meaning of the Corporations Act 2001 of the Commonwealth) of the principal person, or
 - (b) holds an executive position (within the meaning of section 7 of the Act) in a related body corporate or an associated entity of the principal person, or
 - (c) holds or will hold any relevant financial interest in the principal person, or is or will be entitled to exercise any relevant power (whether in the person's own right or on behalf of any other person) in the business of the principal person, and by virtue of that interest or power is or will be able to exercise a significant influence over or with respect to the management or operation of the principal person.
2. relevant financial interest, in relation to a principal person, means—
 - (a) any shares in the capital of the principal person, or
 - (b) any entitlement to receive any income derived from a business carried on by the principal person, or to receive any other financial benefit or financial advantage from the carrying on of the business, whether the entitlement arises at law or in equity or otherwise.



3. relevant power means any power, whether exercisable by voting or otherwise and whether exercisable alone or in association with others—
 - (a) to participate in any directorial, managerial or executive position in the principal person, or
 - (b) to elect or appoint any person to any such position.

What do the changes do?

Insert an expanded scope in relation to a Connected Person by including:

1. The trustee of a trust for which the principal person is a beneficiary; or
2. Where the other person is a beneficiary, or a child, spouse or de facto partner of a beneficiary in relation to a trust that the principal person is or has at any time been, a trustee of.

Schedule 5 Penalty Notice offences

Currently under this Schedule:

Section 57(2)	\$550 (in the case of an individual) or \$1,100 (in the case of a corporation)
Section 60(1)	\$550 (in the case of an individual) or \$1,100 (in the case of a corporation)
Section 60(2)	\$550 (in the case of an individual) or \$1,100 (in the case of a corporation)

What do the changes do?

Increased the penalties for contravention of sections 57(2), 60(1) and (2) to \$1,100 for an individual and \$2,200 for a corporation.

Section 57(2)	\$1,100 (in the case of an individual) or \$2,200 (in the case of a corporation)
Section 60(1)	\$1,100 (in the case of an individual) or \$2,200 (in the case of a corporation)
Section 60(2)	\$1,100 (in the case of an individual) or \$2,200 (in the case of a corporation)

Insert new penalty offences to correspond to the newly inserted additional clauses detailed above.

Section 60(2A)	\$1,100 (in the case of an individual) or \$2,200 (in the case of a corporation)
Section 60(2C)	\$1,100 (in the case of an individual) or \$2,200 (in the case of a corporation)
Section 71(1)	\$1,100 (in the case of an individual) or \$2,200 (in the case of a corporation)
Section 166(1)	\$1,100 (in the case of an individual) or \$2,200 (in the case of a corporation)

Property and Stock Agents Act 2002

Section 37 Rules of conduct for licensee's business

Currently under this Section:



T: (02) 9929 0226 M: 0403 738 996 ABN: 61 649 876 437
 E: dbannerman@bannermans.com.au W: www.bannermans.com.au
 P: PO Box 514 NORTH SYDNEY NSW 2059 AUSTRALIA

Liability limited by a scheme approved under Professional Standards Legislation

Section 37 covers the following:

- 1) The regulations may prescribe rules of conduct to be observed in the course of the carrying on of business or the exercise of functions under a licence or certificate of registration.
- 2) A licensee or registered person who without reasonable excuse contravenes a rule of conduct prescribed for the purposes of this section is guilty of an offence.

A contravention currently results in a maximum penalty of—

- (a) 100 penalty units in the case of a corporation, or
- (b) 50 penalty units in any other case.

What do the changes do?

Increase the maximum penalty tenfold for corporations and fourfold in any other case to:

- (a) for a corporation - 1000 penalty units in the case of a corporation, or
- (b) otherwise, 200 penalty units.

Section 38 Undertakings by Licensees and registered persons

Currently under this Section:

Section 38 covers the following:

The Secretary may accept a written undertaking from the holder of a licence or certificate of registration as to the manner in which the holder will exercise functions under the licence or certificate of registration.

Note—

Part 12 provides that a breach of such an undertaking is grounds for taking disciplinary action against a person.

What do the changes do?

This has been deleted, with the amendments to be incorporated into a new clause 210A.

Part 3 Division 6 Unjust Conduct by Licensees

Currently under this Division:

5 sections are captured under the current division – sections 53A-53E:

53A Interpretation

- (1) For the purposes of this Division, conduct of a licensee is unjust if it is conduct—
 - (a) that is dishonest or unfair, or



T: (02) 9929 0226 M: 0403 738 996 ABN: 61 649 876 437
E: dbannerman@bannermans.com.au W: www.bannermans.com.au
P: PO Box 514 NORTH SYDNEY NSW 2059 AUSTRALIA

Liability limited by a scheme approved under Professional Standards Legislation

- (b) that consists of anything done, or omitted to be done, in breach of contract, whether or not proceedings in respect of the breach have been brought, or
- (c) that consists of the contravention of this Act or the regulations or any other enactment administered by the Minister, or
- (d) that consists of the failure to comply with a condition or restriction to which the licence is subject or an order of the Tribunal applicable to the holder.

53B Undertakings by licensee

- 1) Where it appears to the Secretary that a licensee has, in the course of carrying on business as a licensee, repeatedly engaged in unjust conduct, the Secretary may, with the consent of the Minister—
 - (a) request the licensee to execute a deed in terms approved by the Secretary whereby the licensee gives undertakings as to—
 - I. the discontinuance of the unjust conduct, and
 - II. the licensee's future conduct, and
 - III. the action the licensee will take to rectify the consequences of the licensee's unjust conduct, or
 - (b) apply to the Tribunal for an order under section 53D.
- 2) Where the Secretary makes a request or application under subsection (1), it is to be presumed, unless the contrary is proved, that the Secretary does so with the consent of the Minister.
- 3) Where a licensee executes a deed under this Division and observes the undertakings given in the deed, the Secretary may not apply for an order under section 53D by reason of any conduct to which the undertakings relate.

53C Register of Undertakings

- 1) When a licensee executes a deed under this Division, the Secretary must—
 - (a) lodge a copy of the deed with the principal registrar of the Tribunal, and
 - (b) give a copy of the deed to the licensee who executed it.
- 2) The Secretary must retain all deeds and register the deeds in a Register of Undertakings kept by the Secretary and containing the prescribed particulars.
- 3) The Register of Undertakings may, at any reasonable time, be inspected by any person free of charge.
- 4) A licensee must observe undertakings given by the licensee in a deed executed under this Division.

Maximum penalty—100 penalty units.



T: (02) 9929 0226 M: 0403 738 996 ABN: 61 649 876 437
E: dbannerman@bannermans.com.au W: www.bannermans.com.au
P: PO Box 514 NORTH SYDNEY NSW 2059 AUSTRALIA

Liability limited by a scheme approved under Professional Standards Legislation

- 5) A prosecution for an offence under subsection (4) may not be instituted except by the Secretary with the leave of the Tribunal given when making an order in accordance with section 53D.

53D Restraint of unjust conduct

- 1) Where, on the application of the Secretary, the Tribunal is satisfied after inquiry that a licensee has repeatedly engaged in unjust conduct, the Tribunal may order the licensee to refrain from engaging in unjust conduct in the course of carrying on business as a licensee and the licensee must comply with the order.
- 2) Where, on the application of the Secretary, the Tribunal is satisfied that a licensee has failed to observe an undertaking given by the licensee in a deed executed under this Division, the Tribunal may—
 - (a) make an order under subsection (1) against the licensee, and
 - (b) in addition, in the case of an undertaking to take action to rectify the consequences of the licensee's unjust conduct, make an order to observe that undertaking within a time specified by the Tribunal when making the order.
- 3) If the licensee is a body corporate and the Tribunal is satisfied that the unjust conduct or breach of undertaking concerned was engaged in with the consent or connivance of a person who, at the time of the conduct or breach, was a director of, or a person concerned in the management of, the body corporate, the Tribunal may, in addition to any other order it may make under this section, make an order prohibiting the person from consenting to, or conniving at, engagement in unjust conduct, or a breach of an undertaking under this Division, by the body corporate or any other body corporate of which the person is a director or in the management of which the person is concerned.
- 4) The person to whom an order under subsection (3) relates must comply with the order.

Maximum penalty—100 penalty units.

- 5) An order under this section may be made subject to such conditions (whether as to the duration of the order or otherwise) as the Tribunal thinks fit, including conditions as to the future conduct of the licensee and conditions specifying the action to be taken by the licensee to rectify the consequences of the licensee's unjust conduct.

53E Variation etc. of restraining order

The Tribunal may, on the application of the Secretary, vary or discharge an order made under this Division.

What do the changes do?

This division has been deleted, with a new proposed section 210A to incorporate the relevant provisions.

Section 55 No entitlement to commission or expenses without agency agreement

Currently under this Section:

55 No entitlement to commission or expenses without agency agreement



T: (02) 9929 0226 M: 0403 738 996 ABN: 61 649 876 437
E: dbannerman@bannermans.com.au W: www.bannermans.com.au
P: PO Box 514 NORTH SYDNEY NSW 2059 AUSTRALIA

Liability limited by a scheme approved under Professional Standards Legislation

- 1) A licensee is not entitled to any commission or expenses from a person for or in connection with services performed by the licensee in the capacity of licensee for or on behalf of the person unless—
 - a) the services were performed pursuant to an agreement in writing (an agency agreement) signed by or on behalf of—
 - (i) the person, and
 - (ii) the licensee, and
 - b) the agency agreement complies with any applicable requirements of the regulations, and a copy of the agency agreement signed by or on behalf of the licensee was served by the licensee on that person within 48 hours after the agreement was signed by or on behalf of the person.

Note—

Section 55A allows a court or tribunal to order that commission and expenses are recoverable in certain circumstances despite subsection (1).

- 2) The regulations may make provision for or with respect to regulating the form of agency agreements and the terms, conditions and other provisions that an agency agreement must or must not contain. Without limiting this subsection, the regulations may prescribe one or more standard forms of agency agreement.
- 3) Without limiting the means by which a copy of the agency agreement may be served on a person, it may be served by electronic means or by such other means as the regulations may allow.

What do the changes do?

New subsections 55(4) and (5) have been inserted restricting the ability of a licensee to require a person to pay a commission or expense in accordance with a “prohibited provision”.

A prohibited provision will be one that has a term, condition or other provision that, under a regulation made pursuant to section 55(2) (extracted above) must not be included in an agency agreement.

Such a regulation is included at Schedule 12 clause 6 of the Property and Stock Agents Regulation 2022 (elaborated on below).

Section 102 Offence

Currently under this Section:

- 1) A licensee must not fail without reasonable excuse (proof of which lies on the licensee) to comply with a requirement under this Division.
- 2) A licensee must not, in purported compliance with a requirement under this Division, furnish information that the licensee knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

What do the changes do?



T: (02) 9929 0226 M: 0403 738 996 ABN: 61 649 876 437
E: dbannerman@bannermans.com.au W: www.bannermans.com.au
P: PO Box 514 NORTH SYDNEY NSW 2059 AUSTRALIA

Liability limited by a scheme approved under Professional Standards Legislation

The maximum penalty has been doubled to 200 penalty units.

182 Appointment of accounts examiner to examine licensee's accounts

Currently under this Section:

- 1) For the purpose of safeguarding the Compensation Fund in relation to the affairs of a licensee, the Secretary may, at any time and from time to time, appoint an appropriately qualified person as an accounts examiner to examine the accounts kept by the licensee in connection with the licensee's business.
- 2) A person is appropriately qualified for appointment if the person has such qualifications or experience as in the opinion of the Secretary are appropriate for the purpose of exercising functions under this Division.
- 3) The appointment of an accounts examiner is to be by instrument in writing.
- 4) The Secretary may publicly notify the appointment of an accounts examiner in relation to the accounts of a licensee.

What do the changes do?

Subsection 1 has been modified to:

The Secretary may, at any time and from time to time, appoint an appropriately qualified person as an accounts examiner to examine the accounts kept by a licensee in connection with the licensee's business.

A new 1A has been inserted expanding on the exercise of the power to appoint an examiner to restrict to the purpose of:

1. Safeguarding the Compensation Fund in relation to the affairs of the licensee; or
2. Investigating compliance with an Act or regulations administered by the Minister.

207 Obstruction etc. of authorised officers

Currently under this Section:

207 Obstruction etc. of authorised officers

A person must not—

- a) without reasonable excuse, refuse or fail to comply with any notice given or requirement made, or to answer any question asked, by an authorised officer under this Part, or
- b) provide information or give evidence in purported compliance with a requirement made or question asked by an authorised officer under this Part knowing the information or evidence to be false or misleading in a material particular, or
- c) wilfully delay, hinder or obstruct an authorised officer in the exercise of the officer's functions under this Part.

Maximum penalty—100 penalty units or imprisonment for 6 months, or both.



T: (02) 9929 0226 M: 0403 738 996 ABN: 61 649 876 437
E: dbannerman@bannermans.com.au W: www.bannermans.com.au
P: PO Box 514 NORTH SYDNEY NSW 2059 AUSTRALIA

Liability limited by a scheme approved under Professional Standards Legislation

What do the changes do?

The maximum penalty has been doubled to 200 penalty units.

New Section 210A

What do the changes do?

A new section 210A is proposed to be inserted into the Property Stock and Agents Act 2002.

This amends and consolidates sections 38 and Division 6 of Part 3 of the current legislation in relation to enforceable undertakings:

- 1) The Secretary may accept a written undertaking given by a holder of a licence or certificate of registration in connection with a matter in relation to the following—
 - a) an Act or regulation administered by the Minister,
 - b) a matter for which the Secretary has a function under this Act.
- 2) Without limiting subsection (1), the Secretary may accept an undertaking to do one or more of the following—
 - a) refrain from conduct that contravenes an Act or regulation administered by the Minister,
 - b) take action to prevent or remedy a contravention of an Act or regulation administered by the Minister,
 - c) take action to resolve a complaint against the licensee or certificate holder,
 - d) pay into the NSW Consumer Law Fund established under the Fair Trading Act 1987, section 79Y an amount not more than the amount of financial benefit that the licensee or certificate holder has obtained directly or indirectly and that is reasonably attributable to a contravention of an Act or regulation administered by the Minister,
 - e) pay the Secretary's costs in relation to the negotiation and enforcement of the undertaking.
- 3) The licensee or certificate holder may withdraw or vary the undertaking at any time, but only with the written consent of the Secretary.
- 4) The consent of the Secretary is required even if the undertaking purports to authorise a withdrawal or variation of the undertaking without that consent.
- 5) The Secretary may apply to the Supreme Court for an order under subsection.
- 6) if the Secretary considers that the licensee or certificate holder who gave the undertaking has breached any of the undertaking's terms.
- 7) The Court may make all or any of the following orders if satisfied that the licensee or certificate holder has breached a term of the undertaking—

- a) an order directing the licensee or certificate holder to comply with that term of the undertaking,
- b) an order directing the licensee or certificate holder to pay to the State an amount not more than the amount of financial benefit that the licensee or certificate holder has obtained directly or indirectly and that is reasonably attributable to the breach,
- c) any order the Court thinks appropriate directing the licensee or certificate holder to compensate a person who has suffered loss or damage as a result of the breach,
- d) another order the Court considers appropriate.

Property and Stock Agents Regulation 2022

Schedule 12 Terms specific to agency agreement for management of strata or community title land

Insert new clause 6 No commission or expenses for work not done

- 1) The agency agreement must not contain a provision that permits the agent to require the person for whom the agent is acting, or another person, to pay a commission to the agent in relation to a prescribed purchase of insurance.
- 2) The agency agreement must contain a provision that prohibits the agent requiring the person for whom the agent is acting, or another person, to pay a commission to the agent in relation to a prescribed purchase of insurance.
- 3) In this section—

prescribed purchase of insurance means a purchase of an insurance policy where the person for whom the agent is acting obtained the quotation for the insurance policy and arranged the purchase of the insurance policy without the assistance of the agent.

Schedule 13 Penalty notice offences

Currently under this Schedule:

Section 37(2)	\$550 (in the case of an individual) or \$1,100 (in the case of a corporation)
Section 102(1)	\$1,100 (in the case of an individual)
Section 102(2)	\$1,100 (in the case of an individual)
Section 207(a)	\$1,100 (in the case of an individual)
Section 207(b)	\$1,100 (in the case of an individual)
Section 207(C)	\$1,100 (in the case of an individual)

What do the changes do?

Increased the penalties for contravention of sections 37(2), to \$1,100 for an individual and \$2,200 for a corporation and 102(1) and (2) and 207(a)-(b) and (c) to \$2,200 for the individual.



T: (02) 9929 0226 M: 0403 738 996 ABN: 61 649 876 437
 E: dbannerman@bannermans.com.au W: www.bannermans.com.au
 P: PO Box 514 NORTH SYDNEY NSW 2059 AUSTRALIA

Liability limited by a scheme approved under Professional Standards Legislation

Section 37(2)	\$1,100 (in the case of an individual) or \$2,200 (in the case of a corporation)
Section 102(1)	\$2,200 (in the case of an individual)
Section 102(2)	\$2,200 (in the case of an individual)
Section 207(a)	\$2,200 (in the case of an individual)
Section 207(b)	\$2,200 (in the case of an individual)
Section 207(C)	\$2,200 (in the case of an individual)

Insert new penalty offences to correspond to the newly inserted additional clauses detailed above.

Section 55(4)	\$1,100 (in the case of an individual) or \$2,200 (in the case of a corporation)
---------------	--

If you require assistance with strata related issues, please feel free to make an enquiry via enquiries@bannermans.com.au and one of our specialists will be in touch.

Prepared by Bannermans Lawyers
26 August 2024



T: (02) 9929 0226 M: 0403 738 996 ABN: 61 649 876 437
 E: dbannerman@bannermans.com.au W: www.bannermans.com.au
 P: PO Box 514 NORTH SYDNEY NSW 2059 AUSTRALIA

Liability limited by a scheme approved under Professional Standards Legislation