

# **Statement of Regulatory Intent**

## **Reforms to the *Property and Stock Agents Act 2002***

### **Purpose of this statement**

The purpose of this Statement of Regulatory Intent is to outline NSW Fair Trading's enforcement intentions for new regulatory obligations under the *Property and Stock Agents Act 2002*, which started on 23 March 2020.

### **Status of this statement**

This statement is issued by the Commissioner for Fair Trading, defined as the Secretary under the *Property and Stock Agents Act 2002*, as the administrator of that Act.

This statement is issued in good faith as an assurance to industry participants about the enforcement approach to be taken in relation to the new regulatory obligations.

This statement operates alongside Fair Trading's published [Compliance and Enforcement Policy](#) which includes a compliance pyramid of escalating enforcement options in response to non-compliance. Exceptions apply where consumer safety or other high risk breaches of the law are committed.

### **Duration of this statement**

This re-issued statement is dated 4 September 2020 and is effective until 1 April 2021, unless extended or otherwise varied in the interim.

Fair Trading will move to more active enforcement of compliance with the new regulatory obligations from 2 April 2021 onwards and revise its advice to industry accordingly.

### **Legislation and subordinate legislation creating new regulatory obligations**

The new regulatory obligations on real estate and property agents that this statement addresses are found in the following laws and policies, which all commenced on 23 March 2020:

- *Property, Stock and Business Agents Amendment (Property Industry Reform) Act 2018*
- *Property, Stock and Business Agents Amendment Regulation 2019*
- *Property and Stock Agents (Qualifications) Order 2019*
- Schedule 2.12 of the *Fair Trading Legislation Amendment (Reform) Act 2018*
- Schedules 1.6, 1.8 and 1.9 of the *Better Regulation Legislation Amendment Act 2019*
- Secretary's Supervision Guidelines issued under section 32 of the Act
- Secretary's Continuing Professional Development requirements issued under section 20 of the Act and published on the Fair Trading website

Some of the key changes for agents introduced by these laws and policies include:

- restrictions on the functions that can be performed by assistant agents, class 2 licensees and class 1 licensees who are not nominated as a licensee in charge
- separate trust accounts to be maintained to hold rental and sales money
- new Continuing Professional Development (CPD) requirements
- comprehensive operational procedures to be maintained by the principal licensee.

### **Fair Trading's regulatory intent: an educative approach to assist compliance**

Since commencement of the new regulatory obligations, Fair Trading's overall approach to compliance has been an educative one. Compliance operations have been principally aimed at assisting industry participants to understand and comply with their new regulatory obligations.

This educative approach was previously going to end on 30 September 2020. However, due to the impact of COVID-19 on the real estate and property profession, Fair Trading's educative approach to compliance with the new laws is extended for a further six months to 31 March 2021. During this time, Fair Trading's compliance response will be not to penalise agents who have been identified as non-compliant with new regulatory obligations.

However, Fair Trading will also expect non-compliant agents to be able to demonstrate that they have taken active steps towards full compliance within a reasonable time and to be compliant after this Statement expires.

**Fair Trading may take enforcement action against higher risk breaches of existing law**

For the duration of this statement, Fair Trading retains the option to take active enforcement action against existing regulatory obligations that did not change on 23 March 2020. This is especially important where non-compliance poses a higher risk of consumer detriment, including but not limited to:

- unlicensed trading (sections 8, 9 and 10 of the Act)
- fraud and false accounts of money received (sections 211 and 212 of the Act)
- misrepresentations generally (section 52 of the Act)
- underquoting (Part 5, Division 3 of the Act)
- failure to arrange for annual audit of the agency's trust accounts (section 111 of Act)
- failure to hold professional indemnity insurance (section 22 of Act).

**More information**

More information about the real estate and property services industry reforms is available on the Fair Trading website at [www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au).



**Rose Webb**  
**Commissioner for Fair Trading**  
**Deputy Secretary, Better Regulation**  
**NSW Department of Customer Service**  
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