



# Real Estate and Property Services Industry Reform Paper

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PO Box 972  
PARRAMATTA NSW 2124  
Tel. 13 32 20  
[www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au)

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# Minister's message

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Since the current *Property Stock and Business Agents Act 2002* commenced, the commercial landscape has changed. The property sector has become a major force in the NSW economy, the internet has greatly increased consumers' access to information, and the profile of the industry is rapidly changing due to the rising influence of online service providers and the impact of market disruptors.

The licensing framework for the real estate and property services sector was last subject to a full review in 1997, meaning this paper represents the first review in nearly 20 years.

There is no doubt about the strong performance of the NSW economy in recent years. According to the Australian Bureau of Statistics the real estate sector in New South Wales is worth more than \$15 billion per annum to our economy.

The real estate and property industry is integral to our State's economic prosperity and the overwhelming majority of real estate agents are hardworking individuals who bring skill and integrity to their profession.



The NSW Government has introduced significant reforms in the last 18 months to strengthen consumer protection in the real estate industry such as:

1. Strengthening the law prohibiting underquoting in real estate transactions;
2. Regularly publishing consumer complaints data;
3. Increasing protections against the use of sunset clauses in off-the-plan property sales; and
4. Reducing the cost of pre-purchase property inspection reports.

This paper sets out the NSW Government's vision for the industry. It considers both the short and longer terms, including revised training pathways, greater transparency and accountability, opportunities for industry co-regulation, improved trust account processes, more effective disciplinary measures, independent dispute resolution and encouraging digitisation of the sector.

I would encourage anyone with an interest in this industry to take a close look at the reforms in this paper.

I would like to thank industry participants from the Real Estate Institute of NSW (REINSW), The Estate Agents Co-operative (EAC), the Australian Livestock and Property Agents Association (ALPA) and Strata Community Australia (SCA) for their input and leadership in bringing about these important reforms.

A handwritten signature in blue ink, appearing to read 'Victor Dominello'.

Victor Dominello MP

**Minister for Innovation and Better Regulation**

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# Introduction

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## Purpose of the Paper

This paper sets out a reform path for the real estate and property industry, with a view to raising the standards of education and conduct in the industry to a level that will enable provision for some co-regulation in the future.

This paper identifies a range of reforms that the Government intends to introduce into Parliament in early 2017. Comments on this paper will inform drafting of a Bill and Regulations to implement these reforms. We are seeking feedback on practical issues associated with introducing these reforms, including appropriate transitional arrangements (see 'Feedback' below).

A pathway of around five years has been identified to increase these standards and this paper sets out reforms to licensing and qualifications, continuing professional development, supervisory responsibilities, financial accountability, and disciplinary powers.

## Background

Property agents act on behalf of consumers in the biggest transactions of most people's lives – the sale or purchase of a residential dwelling, rural property, commercial premises or business. Agents deal with large sums of money and are entrusted to manage valuable rental properties and strata schemes. It is therefore important that the regulatory framework for the property services industry provides consumers with sufficient protection and encourages ethical, competent and professional conduct.

At the same time, the important role of the real estate and property sector in the NSW economy must be supported by the regulatory regime. Any regulatory framework places restrictions and obligations on the operation of businesses, and must balance the need for appropriate levels of consumer protection with the need to enable the efficient and effective operation of the industry.

The *Property, Stock and Business Agents Act 2002* is the primary piece of legislation regulating the NSW real estate and property services industry. The Act establishes a mandatory licensing system for the following service providers:

- Real estate agents
- Buyer's agents

- Stock and station agents
- Business agents
- Strata and community managing agents
- On-site residential property managers

The Act also requires employees of property, stock and business agents who carry out similar functions to their employers (except for managing trust accounts) to hold certificates of registration.

Applicants for licences and certificates of registration are required to:

- be at least 18 years of age for a licence, and 16 years of age for a certificate of registration;
- be a fit and proper person, and, if in partnership with others, those persons must also be a fit and proper person;
- not be a disqualified person;
- have the required qualifications; and
- in the case of a licensee, have paid any required contribution to the Property Services Compensation Fund.

An applicant can be a disqualified person for a range of reasons, for example:

- having a recent conviction for certain offences;
- being mentally incapacitated;
- being disqualified from holding a licence or certificate or registration under a corresponding law;
- being in partnership with a disqualified person;
- failing to pay a contribution to the Compensation Fund; or
- failing to pay a monetary penalty under the Act.

The Act and Regulation impose on licensees rules of conduct, duties of disclosure, including disclosure of conflicts of interest, regulate agency agreements, require the keeping of trust accounts and records and auditing and reporting on these, and require agents to hold an appropriate policy of professional indemnity insurance. The Act provides for disciplinary action to be taken in case of breaches of licence conditions or the rules of conduct. This action ranges from a caution to exclusion from the industry by revoking, cancelling or suspending a licence.



The Act also establishes a Property Services Compensation Fund, which can provide compensation payments to persons who suffer a pecuniary loss as a result of an agent's failure to account.

There is also other legislation that is relevant to the property industry and the activities of licensees:

- *Strata Schemes Management Act 1996*
- *Community Land Management Act 1989*
- *Residential Tenancies Act 2010*
- *Retirement Villages Act 1999*
- *Fair Trading Act 1987*
- *Retail Leases Act 1994*
- *Australian Consumer Law (ACL)*

### **State of the sector**

As at 30 June 2016 there were approximately 20,566 licensees, 24,459 certificate holders and 7,129 corporations licenced under the Act. In comparison with 30 June 2015 (19,908 licensees, 21,988 certificate holders and 6,732 corporations), 30 June 2011 (17,484 licensees, 19,477 certificate holders and 5,728 corporations) and 30 June 2006 (14,742 licensees, 15,711 certificate holders and 4,990 corporations), this indicates a steady growth in the number of persons entering the industry.

While there is no prescribed standard for fees charged by licensees, consumers pay on average 2 - 4.5% of the sale price of a property to an agent to sell a property, which may or may not include marketing fees. However, commissions can be higher in areas with low property turnover. Fees to manage rental properties also vary, but can be 5-10% of the weekly rent, and can include the first weeks' rent as a letting fee.

Strata managers' fees vary depending on the size and complexity of the scheme being managed and the level of services provided.

### **Fair Trading's Real Estate and Property Division**

NSW Fair Trading recognises the need to deliver services and a regulatory framework to the real estate and property market that is expert, contemporary and balances industry efficiency with consumer expectations.

To achieve this, the NSW Government established a Real Estate and Property Division within Fair Trading in 2015. This division is responsible for the regulation and oversight of the NSW property services industry to deliver:

- an accessible and accountable regulator;
- better market partnering, collaboration and consultation;
- better regulation;
- expertise in our staff; and
- improved outcomes for the market.

### **Real Estate Reference Group**

The Real Estate Reference Group is an industry-Government discussion forum that was established in 2015. The forum facilitates liaison, discussion and communication with key stakeholders regarding significant matters for the property industry. On the Reference Group the industry is represented by the Real Estate Institute of NSW (REINSW), Estate Agents Co-operative (EAC), Australian Livestock and Property Agents Association (ALPA) and Strata Community Australia (SCA).

The other Reference Group members are senior officers from the Department of Finance, Services and Innovation.

### **Feedback**

Feedback from stakeholders and interested parties will help inform the drafting of the Bill and Regulations to implement these reforms. We are seeking feedback on practical issues associated with introducing these reforms, including appropriate transitional arrangements. In particular, you may wish to provide feedback on the following matters:

- Are there any practical implementation issues we should be aware in drafting the legislation to introduce the reform?
- Will there be any unintended consequences of the reforms?
- What transition period would be appropriate?
- How long will it take for the industry to be ready for a co-regulatory framework?

You can provide your feedback to [policy@finance.nsw.gov.au](mailto:policy@finance.nsw.gov.au) by no later than **5 December 2016**.

**Important note: release of information**

In regard to providing feedback, you should be aware that there may be circumstances in which the Government is required by law to release that information (for example, in accordance with the requirements of the *Government Information (Public Access) Act 2009*).

## Part 1 - Licensing and qualifications

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The licensing regime for the property services sector protects consumers against potential risks by controlling who can work in the industry and what qualifications they must hold. It also provides a means to impose rules to encourage a fair and competitive marketplace, require continuing professional development and take disciplinary action against licence and certificate holders for breach of legislative requirements. Such disciplinary action can include penalties and suspension or revocation of a licence.

Currently, the Property, Stock and Business Agents Act requires people working in the NSW property services sector must hold either a certificate of registration or a licence. A licence can be held by an individual or a corporation. Persons acting as, or carrying on a business as, one of the following types of agent must hold the appropriate licence:

- Business agent
- Buyer's Agent
- On-site residential property manager
- Real estate agent
- Stock and station agent
- Strata or community scheme managing agent.

A corporation or an individual can hold one or more of these licences. In the case of a corporation licence, at least one of the directors must also hold the relevant class of licence.

A person acting as a:

- Real estate salesperson;
- Stock and station salesperson;
- Business salesperson; or
- Registered manager;

who is employed by a licensee, must hold the appropriate certificate of registration.

### **General eligibility requirements**

All licence and certificate of registration holders are required to:

- be at least 18 years of age for a licence, and 16 years of age for a certificate of registration;

- be a fit and proper person, and, if in partnership with others, those persons must also be a fit and proper person;
- not be a disqualified person;
- have the required qualifications; and
- in the case of a licensee, have paid any required contribution to the Property Services Compensation Fund.

Each business must have a 'licensee in charge', but currently this is not a separate licence category. While the Act imposes on licensees in charge additional responsibilities in regard to supervision, they are required to hold the same qualifications and licence as a licensee. In limited circumstances, an exemption may be granted to the requirement to have a licensee in charge. This could be the case in a remote rural area where it could be difficult to have a licensee in charge in each branch office of an agency.

### **Qualifications**

The qualifications for the majority of property services licenses and certificates of registration are specified in the Property, Stock and Business Agents (Qualifications) Order 2009. Auctioneer qualifications are found in the Property, Stock and Business Agents (Auctioneers Qualifications) Order 2009.

The minimum educational requirements are based on units of competency and qualifications in the Property Services Training Package. The qualifications comply with the Australian Qualifications Framework and are recognised nationally.

The required qualifications vary for each type of licence and certificate of registration, but there is significant overlap in the competency units required for several of the licences.

### **IPART Report - Reforming Licensing in NSW**

In 2012, the NSW Government asked the Independent Pricing and Regulatory Tribunal (IPART) to review licences in NSW. The aim of the project was to identify reforms that would produce a reduction in regulatory burden for business and the community.

IPART's final report into licensing in NSW was released in September 2014 and was adopted by the Government. Among other matters, the Report recommended that all licensing systems be reviewed using the IPART Licensing Framework and Licensing Guide.

The IPART best practice framework sets out a range of reasons that may justify government intervention in the market. These reasons often focus on failure of the market to operate efficiently or to protect vulnerable groups.

The current property services licensing regime was assessed using the IPART guide. The assessment concluded that a licensing scheme is warranted to provide adequate consumer protection. However, the assessment also found that the design of the current scheme could be revised. For example, the licensing categories could be reduced, and the corporation licence could be deleted.

### **Review of real estate and property industry training**

In 2015, an independent panel was appointed to assess training standards for the property industry and determine how these standards could be improved.

In November 2015, the panel publicly released a consultation paper and sought submissions. The panel also held face-to-face meetings with key stakeholder organisations and visited some regional areas. Over the consultation period 24 submissions were received from industry organisations, training organisations, individuals and real estate businesses. The panel's final report and recommendations were released in March 2016, and are available from the NSW Fair Trading website.

The report noted that the major function of educational standards should be to protect the public and that mandatory training can be supported where the benefit of reducing the risks outweighs the costs to business.

The review made a number of recommendations for reform of training requirements for the property services industry, which informed the reform proposals in this paper.

## **Reforms to licensing and qualification requirements**

The following reforms to licensing and qualifications will introduce measures that will improve professional standards and skills across the industry.

The reforms will only apply to new industry entrants or new licence applicants, and grandfathering arrangements will be put in place for existing certificate holders and licensees, and for licensees acting as a licensee in charge. These reforms will be introduced over a period of time to allow the industry to adjust to the new arrangements.

### ***Certificate holders***

The training review found that, although the Property, Stock and Business Agents Act clearly requires licensees in charge to properly supervise staff, in practice such supervision is often non-existent, and certificate holders frequently work with little or no supervision or support. The review found that the unsupervised activities of certificate holders pose a risk to consumers, and recommended that the education requirements for certificate holders be increased from 4 to 7 units. The review recommended that the extra units should focus on minimising risks to consumers and improving knowledge of and compliance with relevant laws.

The Government also proposes to amend the Act to clearly limit the activities that certificate holders can undertake, and place greater emphasis on the responsibility of the licensee in charge to ensure proper supervision of staff. For example, certificate holders will not be able to enter into contracts on behalf of the agency, and will not be able to authorise trust account transactions.

Furthermore, employees or others undertaking certain duties within the industry (such as reception, administration, IT management and graphic design) will be specifically exempted from the requirement to hold a certificate of registration, unless they are also undertaking the duties of an agent.

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### ***Reforms***

- 1.1 *Applicants for a certificate of registration in the property services industry must complete 7 units of competency from the Certificate IV qualification*
- 1.2 *Require certificate holders to complete the qualifications for, and transition to, a full licence within 4 years*

- 1.3 *Exempt persons undertaking certain duties from the requirement to hold a certificate of registration unless they are also undertaking the duties of an agent*
  - 1.4 *Specify the activities which certificate holders can undertake and place greater emphasis on the responsibility of the licensee in charge to ensure proper supervision of staff*
- 

### **Licence holders**

In relation to licensees, the report found that the Certificate IV is adequate formal education for licence holders who simply sell or manage property and do not operate a trust account or manage their own business. The report also recommended that holding a certificate of registration for a minimum time period should be a pre-requisite for eligibility to apply for a licence, and that a licence applicant be required to provide evidence that they have attained certain competencies during this period. The Government supports the review's findings and proposes that a certificate of registration should be held for 12 months before a person can obtain a licence.

The Government also proposes to amend the Act to clarify the activities that a licence holder can undertake, for example prohibiting licence holders from authorising trust account transactions except in exempt circumstances. Exempt circumstances will include where a licensee in charge is temporarily absent or other urgent circumstance.

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### **Reforms**

- 1.5 *Applicants for a licence in the property services industry must obtain a Certificate IV qualification from the CPP07 Property Services Training Package, along with at least 12 months' practical experience*
  - 1.6 *Require licence applicants to provide evidence to NSW Fair Trading of the attainment of specified competencies during the 12 months' practical experience*
  - 1.7 *Specify the activities which licence holders can undertake and place greater emphasis on the responsibility of the licensee in charge to ensure proper supervision of staff*
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### **Licensee in charge**

The review found that licensees in charge should be trained in trust account management and management of a business. The review considered that training in business management is necessary because it formed the view that there is a direct link between business failure and trust account defalcation. The review considered that licensees in charge should hold a diploma qualification, and



noted that the key differences between the Certificate IV and the diploma are units relating to managing trust accounts, managing staff and running a business.

The Government considers that a licensee in charge should also be required to have 2 years' industry experience, in order to have a thorough understanding of the practical aspects of running a real estate business.

The review recommended that a separate licensee in charge licence category be created, and this is supported by the majority of industry representatives on the Reference Group. This category will enable the role and responsibilities of the licensee in charge to be clearly distinguished from other licence and certificate holders. The review also recommended that the 2 years' experience be competency based.

While the law already provides for exemptions to the requirement that each business must have a licensee in charge, clarifying that a licensee in charge will have sole authority to deal with certain activities that are very significant for the operation of a business means that the laws will also have to provide for circumstances where the licensee in charge is temporarily unavailable, whether due to holidays or illness.

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## **Reform**

- 1.8 *Create a new licence category of 'licensee in charge'*
  - 1.9 *Applicants for a 'licensee in charge' licence in the property services industry must obtain a diploma level qualification from the CPP07 Property Services Training Package (or a Certificate IV and an equivalent qualification in business management) and at least 2 years' experience within a licensed business*
  - 1.10 *Applicants for a licensee in charge' licence will also be required to provide evidence to NSW Fair Trading of the attainment of specified competencies during the 2 years' practical experience*
  - 1.11 *Update the supervision guidelines to clarify the licensee in charge's responsibilities*
- 

## **Simplification of the licensing system**

The existing licensing system for the NSW property services industry is complex and many licence holders hold more than one licence. There is significant overlap in the qualifications required for the different licences, with the buyer's agent licence, on-site residential property manager's licence, stock

and station agent's licence and business agent's licence all requiring similar qualifications to the real estate agent's licence.

The Government considers that the licensing regime should be simplified, and that the buyer's agent licence, on-site residential property manager's licence and business agent's licence should be absorbed into the real estate agent's licence.

The Government also proposes to remove the corporation licence. This licence leads to duplication as at least one director of a licensed corporation is also required to hold a licence for the relevant area of work. It adds costs to business but does not provide any significant additional consumer protection. In the absence of the corporation licence a company could still be established to run a real estate or property business, and the persons working in the business would hold individual licences.

### **Licence periods**

A further way to simplify licensing, and reduce costs and red tape, is to allow for longer licence periods. Licences and certificates of registration are currently issued for a 1 year period, but licensees and certificate holders will be offered a choice of a 1 or 5 year licence. This is in line with the IPART licensing guide, which states the duration should be set to reflect the expected frequency of change to the elements of the licence (i.e. the longer the period of no change, the longer the licence duration).

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### **Reforms**

- 1.12 *Incorporate the on-site residential property manager's licence, business agent's licence and buyer's agent licence into the real estate agent's licence*
  - 1.13 *Abolish the corporation licence*
  - 1.14 *Licensees in charge, licensees, and certificate holders will have the choice of a 1 or 5 year licence/certificate period*
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## Part 2 - Continuing Professional Development

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### Current requirements

In NSW, all property services industry licence and certificate of registration holders are subject to a condition requiring Continuing Professional Development (CPD).

The CPD requirements aim to protect consumers by ensuring that licensees and certificate holders receive training on legislative changes, skills are maintained and updated, and professionalism improved.

Guidelines have been published by NSW Fair Trading setting out the CPD requirements for licence and certificate holders. Under the current guidelines, a licensee or certificate holder must complete 12 points of CPD in the 12 months prior to the renewal date of their licence or certificate. If more than 12 points of CPD are undertaken, a maximum of 11 points can be carried forward for 12 months. Licensees and certificate holders must keep records of CPD as proof of attendance or attainment. There are no compulsory CPD units, and licensees and certificate holders can choose from all available courses.

There are numerous training providers, and the costs of undertaking the required annual CPD vary. For example, there are courses on offer for 12 CPD units that cost approximately \$200-\$250, but Fair Trading conducts free CPD seminars.

### Changes to the CPD framework

The CPD regime for the property services sector was examined by the Real Estate Reference Group. Industry representatives expressed strong support for a mandatory and quality CPD training program. The industry representatives also noted that the level of compliance with CPD requirements varies significantly across the industry, and expressed the view that current CPD does not provide an adequate level of ongoing training.

The Government agrees that the level of training in the industry needs to be improved, and considers that an effective CPD program is necessary to ensure the industry receives training on new legislative requirements, to respond to changing market practices and to reduce the number of complaints received by NSW Fair Trading.

To provide a career development pathway from a certificate of registration to a licence, the Government proposes to change required CPD for a certificate holder from 12 points to 6 competency units per annum from the Certificate IV qualification for the first 4 years after the certificate is issued. In combination with 7 competency units required for a certificate of registration, this should enable a certificate holder to complete a Certificate IV qualification within 3-4 years. As part of the licensee in charge's supervision responsibilities, they will be obligated to take steps to ensure that the certificate holder completes the required annual CPD.

To increase the quality and effectiveness of CPD for licensees and licensees in charge, the Government proposes to change the required annual CPD from 12 points (which amounts to 4 hours training) to 6 hours. The 6 hours will be divided into 3 hours of compulsory topics, and 3 hours of elective topics that would be chosen by licensees to suit their own training needs. In line with the greater responsibilities of a licensee in charge, they will also have to undertake an additional 3 hours CPD focusing on business skills. It will no longer be possible to carry forward any extra CPD from year to year.

The compulsory topics and the additional CPD for licensees in charge will be approved by the Commissioner for Fair Trading based on the recommendation of an advisory committee. The compulsory topics will be revised on a regular basis to ensure that this CPD training covers key matters such as legislative changes, identified compliance issues and responses to changing market practices. These topics will be delivered by industry groups and Government agencies, but the elective topics may also be delivered by Registered Training Organisations (RTOs).

To improve verification that certificate and licence holders are completing CPD as required, any entity providing CPD will be required to submit details of training provided to NSW Fair Trading.

The Government considers that increasing the CPD requirement will build skills and professionalism within the industry and contribute directly to better consumer outcomes.

### **Definition of industry group**

Under the current guidelines, an 'industry association' is an organisation that the Commissioner for Fair Trading has determined "exists to promote high standards of agency practice through training". This existing definition of industry association is very general and has given rise to some confusion for training providers.

To clarify this matter, under the new CPD requirements, compulsory topics can only be delivered by an industry group. An industry group is an 'industry association' or any other entity approved in writing by the Minister. Grounds for approval may include that an entity must be able to demonstrate it has sufficient expertise to deliver adequate training, and a close connection with the industry.

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## **Reforms**

- 2.1 *For certificate holders, annual CPD for first 4 years will be 6 competency units from a Certificate IV qualification until the qualification is completed*
  - 2.2 *As part of their supervision responsibilities, licensees in charge will be obligated to ensure that licensees and certificate holders complete the required CPD*
  - 2.3 *Annual CPD for licensees and licensees in charge will be increased from 12 points to 6 hours*
  - 2.4 *Licensees in charge must also complete an additional 3 hours CPD focusing on business skills*
  - 2.5 *Spilt 6 hours of CPD into compulsory and elective topics, 3 hours for each category*
  - 2.6 *Establish an industry/government panel to determine and review compulsory CPD topics and the additional CPD for licensees in charge*
  - 2.7 *Compulsory topics can only be delivered by industry groups and Government agencies*
  - 2.8 *Elective topics may be delivered by RTOs*
  - 2.9 *Require entities providing training to submit details of training to Fair Trading*
  - 2.10 *Define 'industry group' to mean an entity that an industry association or an entity that has been approved by the Minister to provide the compulsory CPD topics*
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## Part 3 - Conduct and accountability

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### Obligations for certificate and licence holders

Under the Act, certificate and licence holders are subject to a range of requirements which aim to ensure honest, professional conduct which complies with all relevant laws. There are also a range of disclosure requirements which aim to ensure that consumers can make informed decisions about property transactions and use of an agent, and are aware of any conflicts of interest the agent may have.

For example, a licensee must have a registered office in NSW where their name and licence details must be legible and conspicuous, they must properly supervise their business, and cannot share a commission with an unlicensed person. Licensees are also liable for the acts of their employees, must keep employee records and cannot employ a disqualified person. Agency agreements must disclose any rebates, discounts or commissions from third parties to whom the agent refers a consumer, and agents must disclose to vendors any relationships with prospective buyers, or whether they will receive, or expect to receive, any consideration from a prospective buyer. Agents must not publish any false or misleading advertisements, and must not underquote on a property's selling price.

In the Regulation, there are general rules of conduct for all licence and certificate holders as well as specific rules of conduct for each licence category. The general rules of conduct establish the standards of professional behaviour that are expected across the industry. Agents are required to act with honesty, fairness and professionalism, to exercise reasonable skill, care and diligence, to act in their client's best interest and not engage in high pressure tactics, harassment or harsh or unconscionable conduct. The specific rules of conduct for real estate agents and stock and station agents concern the process for selling a property, dealing with vendors and property management, but for business agents the specific rules only deal with the sale process.

The Regulation also prescribes a range of mandatory terms for agency agreements. Many of these terms relate to the costs that a client may be required to pay under an agency agreement, such as a commission being payable even if property does not sell. In effect, these mandatory terms act as disclosure requirements and help draw clients' attention to key matters.

However, there are no limitations of the duration of agency agreements or the fees that clients can be charged.

## **Obligations for licensees in charge**

Each place of business must have a licensee in charge. The licensees in charge must properly supervise the conduct of the business, which includes supervising employees, establishing procedures to ensure compliance with relevant laws, and monitoring the operation of those procedures.

## **Fees, commissions and terms of contracts**

As part of the upcoming reforms to the strata schemes management laws, new accountability and disclosure requirements are being introduced for licensed strata managing agents. These measures are contained in the *Strata Schemes Management Act 2015* which will commence on 30 November 2016. The regime for strata managing agents was subject to consultation as part of the strata law reform process. Feedback from members of the public was generally supportive of the proposed regime.

The new requirements include:

- a prohibition on agents receiving commissions, gifts or other benefits, unless these are below a prescribed amount;
- specific dollar disclosure of any commissions or training services received;
- a maximum 3-year contract term;
- no rollover terms in contracts; and
- an obligation to obtain three quotes for insurance unless this is not feasible.

As other property services sector licensees have similar responsibilities to strata managing agents, it is considered appropriate that accountability and disclosure requirements should be made more consistent wherever possible. For example, for ongoing property management agreements licensees could be required to provide annual updates to clients on fees, charges and commissions, and gifts and benefits over a certain value that are provided as inducements could be prohibited. Such measures would ensure consumers are better informed, and would enhance transparency and accountability.

## **Fiduciary duty**

Real estate professionals generally owe a fiduciary duty to clients. That is, they are obliged to act in the best interest of their clients and not profit at the expense of clients without express informed consent. As this is a common law duty, it is possible to contract out of it. Accordingly, it is preferable to codify these obligations in the Act and provide that they cannot be contracted out of.

## **Advertising disclosures to encourage competition**

If consumers were more aware the fees and charges they may have to pay before they choose an agent, this would help them to 'shop around'. This may also encourage effective competition in the property services sector, and help reduce costs for consumers. The Government seeks comments on potential options that would make it easier for consumers to compare licensees when 'shopping around' for real estate services.

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### **Reforms**

- 3.1 *Require licensees to provide an annual update to clients regarding fees, charges, commissions and other relevant information regarding ongoing agreements*
  - 3.2 *Prohibit agents receiving gifts or other benefits, unless these are below a prescribed amount (i.e. \$60.00)*
  - 3.3 *Require specific dollar disclosure of any commissions or training services received*
  - 3.4 *Require licensees to obtain a minimum of three quotes when the cost of goods or services is more than \$2,000.00*
  - 3.5 *Codify the fiduciary duty owed by licensees to their clients*
  - 3.6 *Explore measures to provide greater transparency on fees and charges*
- 

### **Disclosure of material facts**

Section 52 of the Property Stock and Business Agents Act makes it an offence for a licensee in the course of their work to conceal a material fact in order to induce someone to enter into a contract or arrangement. A material fact is something that could have a significant impact on an individual's decision whether or not to buy a property, such as the presence of loose-fill asbestos insulation, or the property having been the scene of a serious violent crime. While a purchaser should carry out their own legal inquiries and inspections of a property, an agent should also not intentionally conceal a material fact.

While section 52 is specific to the real estate industry, the Australian Consumer Law applies across all industries and also contains a general prohibition against deceptive or misleading conduct, and prohibitions on false or misleading representations about the price, quality or standard of a property.



The Government considers that section 52 continues to be necessary as there are some matters that will particularly impact on a decision whether to buy a property that a purchaser cannot easily find out about during normal property inquiries, and the financial impact of buying a property on the basis of incomplete information are significant.

Guidelines have been issued to help licensees understand how to avoid breaching section 52, which provide examples of what may be considered to be a material fact. However, the term is not defined.

Some industry organisations and individual licensees have raised concerns that the lack of a clear definition of material fact means they cannot be certain if they have complied with the disclosure requirements.

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### **Reform**

3.7 *Provide that the following constitute material facts that must be disclosed to a prospective purchaser if the agent is aware of them:*

- *That the property was subject to flooding or bush fire within the preceding 5 years*
- *That the property was the scene of a serious violent crime within the preceding 5 years*
- *That the property poses known significant health or safety risks*
- *That the property is listed on the Loose Fill Asbestos Insulation register*

3.8 *Provide that an agent should also disclose to a prospective purchaser other material facts that a buyer indicates are important to their decision whether to purchase a property, and of which the agent is aware or can reasonably become aware*

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### **Professional indemnity insurance**

Although conveyancers are not licensed under the property, stock and business agents' laws, they play an important role in property industry transactions.

Both property services industry licensees and conveyancers are required to hold professional indemnity insurance (PII). The Property, Stock and Business Agents Regulation specifies that the PII must cover liability for licensees' acts or omissions, negligence, misleading or deceptive conduct, breach of professional duty, unintentional defamation, and unintentional interference with intellectual property rights. It must also cover acts or omissions of employees, agents or other persons engaged in the agency business.

However, the Conveyancers Licensing Regulation 2015 requires that licensees must be insured under a PII policy that is approved by the Secretary of the Department of Finance, Services and Innovation (DFSI). The approval is found in the Conveyancers Licensing Order 2006.

This is a prescriptive approach that can create a monopoly provider situation. A more modern approach is that found under the Property, Stock and Business Agents Act, where licensees must obtain a policy from an Australian Prudential Regulation Authority (APRA)-regulated insurer that meets various minimum standards. It could be a more appropriate approach and less of an administrative burden if the PII requirements for licensed conveyancers were consistent with the PII requirements for property services industry licensees. This would provide greater flexibility for licensed conveyancers and may help reduce costs incurred for both conveyancers and Government.

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## **Reform**

*3.9 The Government consult with the conveyancing industry regarding possible change to the professional indemnity insurance requirements that would allow conveyancers to purchase insurance with prescribed minimum features from any an APRA-regulated insurer*

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## **Dispute resolution**

Real estate agents are the subject of large numbers of complaints to NSW Fair Trading. Consumers usually complain to Fair Trading after the agent has failed to address their concerns.

During 2015, the following numbers of complaints about the property services sector were received by NSW Fair Trading:

- Real Estate Sales: 1150
- Property Management: 516
- Residential Tenancies: 4211
- Strata: 439

One way of improving public confidence in the real estate industry is to improve complaints handling processes.

While the current supervision guidelines (Appendix A) require licensees to maintain documented complaint handling procedures, the Government proposes to improve the standards of consumer dispute resolution. Licensees will be required to establish a formal, written complaints management process

based on the Australian Standard. Failure to establish these processes will attract a penalty and disciplinary action.

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## **Reform**

3.10 *Require licensees in charge to establish a formal, written complaints management system for their business, using the Australian Standard as a guide*

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### **Developers engaging in property sales**

In the case of strata schemes, the developer of the scheme can be involved in either off-the-plan sales in advance of completion, or selling lots once the development is complete. As they are owners of the lots, they can do so without having to hold a licence. This means that they are engaging in real estate sales without being subject to the relevant laws, and this could give rise to consumer detriment. For example, a developer would not be subject to the new underquoting laws or the requirement not to conceal material facts.

The ACL prohibits a person from making false or misleading representations in connection with the supply, possible supply or promotion of goods or services. There are specific prohibitions for certain types of false and misleading representations made in trade or commerce in connection with the sale or grant of an interest in land. The maximum criminal penalties for making false or misleading representations are \$220,000 for an individual and \$1.1 million for a body corporate. Civil penalties for the same amount apply. Other civil remedies include: injunctions; damages; compensation; orders for non-party consumers; corrective advertising orders; and disqualification orders.

It is understood that developers handle these property sales in different ways. In some cases, the developer will have in-house licensed personnel to deal with prospective buyers, whereas others outsource that role to a licensed real estate agent. However, it is not unknown for developers to use salespeople who do not have any real estate qualifications or who are unlicensed. To address this matter while not imposing unnecessary obligations on people selling their own homes privately, a threshold could be introduced for how many properties an individual owner or company can sell in one year before they are required to either hold a real estate agent's licence, or use the services of a licensed real estate agent. This would be similar to the existing approach to private sales of motor vehicles, which requires someone selling more than 4 vehicles per year to hold a motor dealer's licence.

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**Reform**

3.11 *The Government will consult with the industry and the community, and seek feedback regarding developers selling properties without the involvement of appropriately qualified and licensed persons*

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## Part 4 - Audit Processes

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### Trust accounts

Licensees often hold large amounts of money on behalf of clients, either in a general trust account or a separate trust account held exclusively for the benefit of a single client. Trust money may include rent receipts, sales deposits and strata levies.

The Act requires licensees to hold clients' funds in a trust account kept at an authorised deposit-taking institution (ADI) in NSW. Part of the interest earned on general trust accounts is paid into NSW Fair Trading's Statutory Interest Account.

### Accounting to vendors and landlords

Most real estate agencies use separate trust accounts for sales deposits and rental income. In the case of sales deposits, the money should be transferred to the vendor by the end of the settlement period, which is usually 6 weeks. If the money is not received this could trigger a complaint from the vendor and NSW Fair Trading will investigate.

In the case of rental trust accounts, there is no due date or deadline for agents to transfer rental income (less expenses for maintenance or other costs) to a landlord. A 'failure to account' only occurs when a landlord requests the money owed and the agent fails to comply. By the time this happens, there may be a substantial amount of money owed. Most thefts of trust money are associated with rent not being passed on in a timely manner.

Requiring agents to account to landlords at the end of each month for all money received from tenants would provide an earlier warning of a failure to account and thereby reduce losses. This may also help to reduce the amounts paid out of the Property Services Compensation Fund, which amounted to nearly \$2.4 million in the last financial year.

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### Reform

- 4.1 *Require agents to transfer rental income (less authorised expenses) to landlords at the end of each month unless specifically instructed not to do so by their client*
  - 4.2 *Agents will have to hold separate trust accounts for rent and sales money*
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## **Lodgement of audits**

In July 2013, as part of red tape reduction initiatives, the requirement to lodge unqualified audits of trust accounts with NSW Fair Trading was removed from the Act. Only qualified audits are now required to be lodged. An auditor's report is qualified when there is either a limitation of scope in the auditor's work, or when there is a disagreement with management regarding application, acceptability or adequacy of accounting policies.

However, the data in unqualified audits is very useful in ascertaining risks to trust money as it shows what accounting systems are being used, who the auditor was, the amount held in trust accounts, and other significant information. Further, if an agent does not lodge a report, it is not clear to NSW Fair Trading whether the audit was unqualified (and therefore did not have to be lodged) or was qualified but the agent had failed to lodge a copy.

The obligation to submit the audit is imposed on the auditor, so the requirement for all audits to be lodged will not create an additional regulatory burden for agents.

Further, NSW Fair Trading is currently developing an online audit lodgement system, which will simplify the lodging of audits. With the establishment of this data portal, the requirements for all audits to be lodged could be reintroduced, irrespective of findings, at minimal cost. This system will be in operation by the end of the 2016-17 financial year.

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### **Reforms**

4.3 *Require all audits, whether qualified or not, to be lodged with NSW Fair Trading*

4.4 *Establish an online portal for lodgement of audits*

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## Part 5 - Disciplinary Powers

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### **Suspension and cancellation of licences**

Currently, disciplinary action can be taken against licensees and certificate of registration holders, and former licensees and certificate holders. Possible disciplinary actions range from a caution or reprimand to suspension or cancellation of a certificate of registration or a licence, or disqualification from involvement in the direction or management of a business.

During the 2015-2016 financial year, a total of seven property services licences were suspended for varying periods of time, and another 35 licensees were subject to disqualification or cancellation. In some cases, the disciplinary action included orders to make significant payments to the Property Services Compensation Fund.

In addition to disciplinary action, an agent can be required to discontinue unjust action and rectify any consequences of such action, and orders can be sought from the NSW Civil and Administrative Tribunal restraining the conduct if the agent does not desist. Public warnings can also be issued to alert consumers to the risks of dealing with a particular person.

Currently, licences and certificates of registration can only be suspended after a potentially lengthy investigation process. This prevents Fair Trading from taking quick action in the case of immediate and serious risk to consumers. Providing for interim suspension of licences while a matter is under investigation would create a more effective enforcement tool.

In addition, if a licence holder has given false information to obtain a licence, or a licence has been issued in error, a 'notice to show cause' process must be initiated before the licence or certificate can be cancelled.

To ensure a high level of compliance with the new requirement to submit audits for all trusts accounts, failure to submit an audit would be grounds for immediate suspension of an agent's licence while the failure is investigated.

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**Reforms**

- 5.1 *Introduce a power to temporarily suspend a licence or a certificate of registration while an investigation is underway*
  - 5.2 *Introduce a power to immediately cancel a licence or a certificate of registration that was obtained using false particulars or that has been issued in error*
  - 5.3 *Introduce a power to suspend a licence for failure to submit an audit*
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## Part 6 - Future of Real Estate & Property Sector

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### **New technologies and business models**

In common with other industries, the real estate and property services industry is facing significant market disruption from new technologies and business models. Online platforms that facilitate direct interactions between buyers and sellers or lessors and lessees, without intermediation by an agent, together with websites providing property price information, suburb comparisons and even financial and investment information such as 10 year profit forecasts, are challenging the traditional agent role.

While these new platforms and online services do at times raise their own consumer protection issues, (for example, in relation to the accuracy of data provided, the applicability of consumer laws or the role of the platform), the NSW Government recognises the potential for these businesses to empower and reduce costs for consumers.

To take advantage of these opportunities, the Government's approach is to ensure regulation is flexible enough to support and enable innovation and promote competition, while also protecting consumers.

### **Potential for a co-regulatory framework**

The current licensing system creates a hierarchy of certificate holders, licensees and licensees in charge, with set occupational categories and roles, and corresponding qualification requirements. However, the reality of the real estate industry is that business models are changing, and new ways of providing real estate services and organising roles within a real estate business are emerging. The licensing system should encourage this innovation for the benefit of consumers.

One way of doing this would be for the licensing system to move towards licensing only the licensee in charge of a business. The licensee in charge would then decide the appropriate skills and qualifications for people who work in the business, and would also be responsible for their conduct. Training and an accreditation system for people working in real estate businesses could be undertaken by industry groups.

Such a system would depend on the real estate industry's readiness to take responsibility for training and accreditation for those working under a licensee in charge. Strata Community Australia (SCA) has already established a Strata Manager Accreditation Program. The program is a nationally recognised

professional qualification with four levels of accreditation. The program aims to provide a way for consumers to identify strata managers who have undertaken further professional training, and also to provide strata managers with a professional development pathway.

The proposed increases in educational standards in this paper are a step towards increasing the level of competency in the industry and positioning the industry to take a greater role in improving and maintaining standards.

The greater emphasis on the licensee in charge's overall responsibility for the business and staff will require the licensee in charge to have an appropriate level of training and competency. As well as training in running a business, staff management and dealing with trust accounts, licensees in charge who may have previously acted as sales people may need training in other aspects of real estate agency work, such as managing rental properties. NSW Fair Trading will work with industry groups to develop training to develop these and other skills for a licensee in charge. These may result in a "Practice Certificate" or similar accreditation for licensees in charge.

In this regard, the progress of the industry to a co-regulatory framework could be supported and fostered by the NSW Professional Standards Council. The Council works with associations to develop co-regulation initiatives, improve professional standards, meet their co-regulatory commitments, comply with their legislative obligations, and protect consumers. The Council also helps associations to develop Professional Standards Schemes. These Schemes are legal instruments that bind associations to monitor, enforce and improve the professional standards of their members, and protect consumers of professional services.

As part of any future partially co-regulatory framework, consideration could also be given to establishing an ombudsman for the property services sector.

Such ombudsman schemes provide a free service to consumers and are funded by industry contributions. The ombudsman would investigate and make determinations in response to consumer complaints. If the determination is accepted by the consumer, it would become a legally binding decision on both parties.

Similar schemes exist in a number of other industries and have been successful in reducing the level of unresolved consumer complaints. For example, the Energy & Water Ombudsman NSW (EWON)

provides a free, fair and independent dispute resolution service for all electricity and gas customers in New South Wales, and some water customers. There is also the Financial Ombudsman Service (FOS) which provides dispute resolution for consumers and financial services providers.

## **Digitisation**

The Government is moving towards greater digitisation of processes in the property industry.

In NSW, the *Electronic Transactions Act 2000* (the ETA) already enables the use of electronic communications and signatures, subject to certain exceptions. The ETA gives electronic transactions and communications the same status, for legal purposes, as paper-based transactions and documents. The ETA provides legal recognition of electronic signatures irrespective of the technology used and contains provisions that apply to contracts involving electronic communication.

Under the ETA, electronic signatures can be used so long as the method used identifies the signor and indicates the person's intention in relation to the information communicated; is reliable and appropriate; and the person to whom the signature is to be given consents to the use of the method.

Electronic signatures are used when the individuals involved in the transaction are physically removed from one another. The act of witnessing requires someone to physically witness the signing of the document. As a practical matter, there may not be someone readily available to witness the electronic signature. However, the law does not itself preclude an electronic signature being witnessed.

The ETA applies to all NSW laws unless they are specifically exempted by the Electronic Transactions Regulation 2012 (ETR). The ETR excludes various requirements and permissions in connection with legal proceedings and any requirement or permission for a document to be:

- served personally or by post; or
- verified, authenticated, attested or witnessed under the signature of a person other than the author of the document.

If a requirement or permission in a NSW law is exempt this means paper forms may still have to be used, or paper-based information retained.

The Government will consider ways to provide more information to the industry to facilitate the use of electronic transactions.

The Government recently announced plans to accelerate the transition to electronic conveyancing and progressively phase out paper certificates of title. The initiative comes amid a nation-wide move towards e-conveyancing, with Victoria, Western Australia and South Australia all recently announcing new measures to transition conveyancing to the digital channel.

By March 2017, financial institutions will be required to lodge certain mortgages and discharges of mortgage via the national e-conveyancing platform, with the issuing of paper certificates of title to banks to be phased out in that time as well.

The Government is also actively investigating other options for greater digitisation. For example, an online audit lodgement system will soon be introduced allowing audits to be quickly lodged at minimal cost.

Such portals can enable the collection of other industry information that can help inform Government decision making. Opportunities for the development of other online portals will be assessed, and the creation of a broad data collection power will be considered.

### **Digital government in NSW**

The Department of Finance, Services and Innovation (DFSI) has commenced a review of key legislative and regulatory barriers to digital government that will inform the digital government agenda. This work will identify legislative and regulatory reforms necessary to enable the adoption of future-focused ICT systems and administrative and policy settings conducive to a fully digital government in NSW.

Three main areas of focus:

- clean up of outdated legislation to modernise government operations;
- ensuring future legislation supports digital government ; and
- reforming government operations.

Digitisation opportunities in the real estate and property services industry will be explored through the development of the legislative amendments that will introduce the reforms in this paper.

A new ICT and digital government strategy will also be developed for 2017, which will build on achievements and reforms to date and provide the blueprint for the strategic technical transformation necessary to digitising government in NSW. The strategy will align with the broader proposed digital government agenda, which is envisaged as the means to drive digital government transformation through policy and practice reform in NSW.

## Appendix A - Supervision Guidelines

For the purposes of section 32(4), these guidelines set out the following requirements as to what constitutes the proper supervision of the business of a licensee. Whilst a licensee who employs anyone at any place of business of the licensee is responsible for anything done or not done by the person, the Act also recognises that some functions of the licensee may be delegated to staff within an agency.

1. A licensee must have written procedures instructing employees of the agency as to their duties in regard to daily or next day banking practices of the agency with respect to the receipt of trust money. The licensee must be able to provide details of the process which the licensee uses to ensure employees comply with the procedures.
2. A licensee must have written procedures requiring the licensee to conduct a review of trust account cash flow on a monthly basis. The review must include a process which shows that the amounts banked to the trust account have been verified using the financial institution's records as source documents.
3. A licensee must have written procedures that set out the steps that all relevant staff must take to substantiate any selling price estimates which have been provided to a seller or prospective buyer. In framing such procedures, reference should be made to Estimated Price Guidelines which have been published by the Commissioner.
4. A licensee must maintain and be able to demonstrate that listing agents employed by the agency use a checklist in the property sales process for each matter to ensure that following requirements are met:
  - All advertising material accurately describes the property concerned and that the information provided complies with the requirements of the relevant agency agreement and with the Act and Regulations.
  - Proper disclosures of conflicts of interest as required by Division 4 of the Act are made to clients, and where appropriate, any prospective buyer of land.
  - The listing agent engaged to sell the property is aware of the restrictions on obtaining a beneficial interest in property.

The completed checklist must be certified in writing by the agent representing the principal and be retained in the sales file as a record.

5. A licensee must maintain documented complaint handling procedures. These procedures shall include a process that ensures that all complaints about staff behaviour towards consumers, and the agency's response to those complaints, are recorded and retained. The procedure is to provide that complaints of a financial nature are directed to the attention of the licensee in charge or the Manager to be supervised directly by that person. A separate record of the handling of financial complaints must be kept.
6. Where any of the above requirements stipulate the preparation and use of a set of documented procedures, a checklist, or a review system, the licensee must be able to produce this documentation to an authorised officer in accordance with the provisions of section 105 of the Act. The licensee must also be able to produce information demonstrating the regular use and maintenance of the required documentation within the agency.

## **Appendix B - Recent developments for the real estate and property industry**

### **Underquoting**

On 1 January 2016, new measures commenced under the *Property, Stock and Business Agents Act 2002* to address underquoting in the residential real estate sector. The aim of these measures is to ensure that prospective home buyers are provided with accurate price information so that they do not incur unnecessary costs for building inspections and legal services for properties that they could not realistically afford.

Agents are now required to include a genuine estimated selling price in vendor agreements and not to understate the selling price in advertisements or statements about a property for sale. Agents must provide evidence to the seller of how they arrived at the estimated selling price, and ensure that price remains current. If the estimated selling price is expressed as a range, the highest price in the range cannot exceed the lowest price by more than ten per cent.

Agents must also make records of price information that they provide to prospective home buyers. The penalties for underquoting were increased to include possible forfeiture of fees and commissions from the sale of a property.

### **Off-the-plan sales**

In recent years, consumers raised concerns that developers were using sunset clauses to cancel contracts and re-offer the property at a higher price and so take advantage of the heated market conditions for residential property.

In November 2015, the conveyancing laws were strengthened to help stop developers from unreasonably using sunset clauses in their contracts for off-the-plan residential property sales to terminate those contracts. Sunset clauses allow for termination of contracts if the project is not completed in time.

Under these law reforms, a developer who is the vendor under a contract is now required to give notice to each purchaser before ending the contract. This notice must state why the developer proposes to end the contract and give reasons for the delay with the project.

For the contract to be terminated, the purchaser must agree. If the purchaser does not agree, and the dwelling has not been created before the sunset date, then the developer will need to obtain an order from the Supreme Court permitting the contract to be rescinded.

### **Property reports and commercial agents' exemption**

In August 2016, the Property, Stock and Business Agents Regulation 2014 was amended to require real estate agents to keep records of certain reports that are usually prepared for residential properties on the market. This includes pre-purchase building inspection reports, pest and termite reports, and strata and community scheme reports.

The recording requirements for these reports aim to make it easier and quicker for prospective home buyers to obtain this information, and also to help lower the cost of these reports. Agents must keep records of reports they know about, and provide potential buyers with the contact details of the company or inspector who completed the report when they request a sale contract.

The Regulation was also amended to exempt commercial property agents dealing with high-value properties from the licensing requirements. Under this exemption, commercial property agents are no longer required to hold a real estate agent's licence when selling or managing property for a related corporate entity or a large commercial property owner dependent on certain thresholds.

This was one of the recommendations from a report by the Independent Pricing and Regulatory Tribunal (IPART) *Reforming licensing in NSW*. The IPART Report noted that large sophisticated commercial property owners did not need the consumer protection measures in the Act.

### **Fair Trading Complaints Register**

The recently established NSW Fair Trading Complaints Register provides information about businesses who are the subject of 10 or more complaints received by Fair Trading in a calendar month.

The Complaints Register is updated monthly and only includes complaints where NSW Fair Trading considers that they have been made by a real person and relate to a real interaction with a business.

The Complaints Register will contain the following information about the businesses listed:

- the name of the business



- the number of complaints NSW Fair Trading has received about the business in the last month (in some instances, these are broken up according to different product category complaints for the same business).
- the product groups complained about – this feature also allows you to search for complaints data relating to a particular product category, such as electronics or real estate.

For privacy reasons, the Register does not disclose any detailed information on a specific complaint, nor name any person who has made a complaint. Detailed information on how the Complaints Register works can be found in the Guidelines on Fair Trading's website ([www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au)).

As the franchise model of business is common with property agents, there will be many franchisee agent entries. Although these are likely to be unrelated businesses (other than sharing the franchise name) publication will indicate the consumer's experience with that brand.

## Appendix C - List of reforms

### Part 1 - Licensing and Qualifications

- 1.1 Applicants for a certificate of registration in the property services industry must complete 7 units of competency from the Certificate IV qualification
- 1.2 Require certificate holders to complete the qualifications for, and transition to, a full licence within 4 years
- 1.3 Exempt persons undertaking certain duties from the requirement to hold a certificate of registration unless they are also undertaking the duties of an agent
- 1.4 Specify the activities which certificate holders can undertake and place greater emphasis on the responsibility of the licensee in charge to ensure proper supervision of staff
- 1.5 Applicants for a licence in the property services industry must obtain a Certificate IV qualification from the CPP07 Property Services Training Package, along with at least 12 months' practical experience
- 1.6 Require licence applicants to provide evidence to NSW Fair Trading of the attainment of specified competencies during the 12 months' practical experience
- 1.7 Specify the activities which licence holders can undertake and place greater emphasis on the responsibility of the licensee in charge to ensure proper supervision of staff
- 1.8 Create a new licence category of 'licensee in charge'
- 1.9 Applicants for a 'licensee in charge' licence in the property services industry must obtain a diploma level qualification from the CPP07 Property Services Training Package (or a Certificate IV and an equivalent qualification in business management), and at least 2 years' experience within a licensed business
- 1.10 Applicants for a 'licensee in charge' licence will also be required to provide evidence to NSW Fair Trading of the attainment of specified competencies during the 2 years' practical experience
- 1.11 Update the supervision guidelines to clarify the licensee in charge's responsibilities
- 1.12 Incorporate the on-site residential property manager's licence, business agent's licence and buyer's agent licence into the real estate agent's licence
- 1.13 Abolish the corporation licence
- 1.14 Licensees in charge, licensees, and certificate holders will have the choice of a 1 or 5 year licence/certificate period

### Part 2 - Continuing Professional Development

- 2.1 For certificate holders, annual CPD for the first 4 years will be 6 competency units from a Certificate IV qualification until the qualification is completed
- 2.2 As part of their supervision responsibilities, licensees in charge will be obligated to ensure that licensees and certificate holders complete the required CPD
- 2.3 Annual CPD for licensees and licensees in charge will be increased from 12 points to 6 hours

- 2.4 Licensees in charge must also complete an additional 3 hours CPD focusing on business skills
- 2.5 Split 6 hours of CPD into compulsory and elective topics, 3 hours for each category
- 2.6 Establish an industry/government panel to determine and review compulsory CPD topics and the additional CPD for licensees in charge
- 2.7 Compulsory topics can only be delivered by industry groups and Government agencies
- 2.8 Elective topics may be delivered by RTOs
- 2.9 Require entities providing training to submit details of training to Fair Trading
- 2.10 Define 'industry group' to mean an entity that an industry association or an entity that has been approved by the Minister to provide the compulsory CPD topics

### **Part 3 - Conduct and Accountability**

- 3.1 Require licensees to provide an annual update to clients regarding fees, charges, commissions and other relevant information regarding ongoing agreements
- 3.2 Prohibit agents receiving gifts or other benefits, unless these are below a prescribed amount (i.e. \$60.00)
- 3.3 Require specific dollar disclosure of any commissions or training services received
- 3.4 Require licensees to obtain a minimum of three quotes when cost of goods or services is more than \$2,000.00
- 3.5 Codify the fiduciary duty owed by licensees to their clients
- 3.6 Explore measures to provide greater transparency on fees and charges
- 3.7 Provide that the following constitute material facts that must be disclosed to a prospective purchaser if the agent is aware of them:
  - That the property was subject to flooding or bush fire within the preceding 5 years
  - That the property was the scene of a serious violent crime within the preceding 5 years
  - That the property poses known significant health or safety risks
  - That the property is listed on the Loose Fill Asbestos Insulation register
- 3.8 Provide that an agent should also disclose to a prospective purchaser other material facts that a buyer indicates are important to their decision whether to purchase a property, and of which the agent is aware or can reasonably become aware
- 3.9 The Government consult with the conveyancing industry regarding possible change to the professional indemnity insurance requirements that would allow conveyancers to purchase insurance with prescribed minimum features from any an APRA-regulated insurer
- 3.10 Require licensees in charge to establish a formal, written complaints management system for their business, using the Australian Standard as a guide
- 3.11 The Government will consult with the industry and the community, and seek feedback regarding developers selling properties without the involvement of appropriately qualified and licensed persons

#### **Part 4 - Audit Processes**

- 4.1 Require agents to transfer rental income (less authorised expenses) to landlords at the end of each month unless specifically instructed not to do so by their client
- 4.2 Agents will have to hold separate trust accounts for rent and sales money
- 4.3 Require all audits, whether qualified or not, to be lodged with NSW Fair Trading
- 4.4 Establish an online portal for lodgement of audits

#### **Part 5 - Disciplinary Powers**

- 5.1 Introduce a power to temporarily suspend a licence or a certificate of registration while an investigation is underway
- 5.2 Introduce a power to immediately cancel a licence or a certificate of registration that was obtained using false particulars or that has been issued in error
- 5.3 Introduce a power to suspend a licence for failure to submit an audit





**NSW Fair Trading** - a division of the  
**NSW Department of Finance, Services and Innovation**

PO Box 972 Parramatta NSW 2124

**Enquiries**

**13 32 20**

**TTY for hearing impaired**

1300 723 404

**[www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au)**

