

# A review of training for licensed occupations in the New South Wales property services industry

Final Report

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**Commissioned by:  
NSW Fair Trading**



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### 1. Executive summary

This review of training in the property services industry has been challenging for the panel because it is difficult to analyse training needs in isolation of issues such as supervision, professionalism, the complexity of the licensing framework and the diversity of the sector. It has also been challenging because people clearly have different expectations about the outcome of this review and the future of this industry in New South Wales.

Industry bodies have approached this review with a view that more training will improve conduct, make the industry more professional and improve community perceptions. However, decisions about mandatory training, which may impose costs on business and impose barriers to market entry, must be made within the context of government policy, including competition policy.

It is not the role of a licensing regime to increase professionalism, although that may be an incidental and desirable outcome. It is the role of a licensing regime to protect the public interest. There are opportunities for representative bodies to increase the professionalism of this industry. One of these opportunities is to develop accreditation schemes along similar lines as Strata Community Australia. The panel applauds this approach and would encourage other industry associations to consider similar schemes in the future.

Nevertheless, changes should be made to the current training regime for licensed occupations in the property services industry and the panel has made a number of recommendations. These changes will take time to implement and may not deliver immediate benefits but will lay a foundation for ongoing reform of this industry.

A key proposal is to increase the entry requirements for certificate holders. This change reflects a concern that, despite clear obligations in the *Property, Stock and Business Agents Act 2002* (the PSBA), supervision in this industry is either poor or absent. Ultimately, there needs to be a dialogue between industry and government as to how these supervisory obligations can be better fulfilled. However, in the interim, the interests of the public will be better served by providing more comprehensive training to certificate holders.

On examination of the content of the qualification and units of competency in the Property Services Training Package, the panel is clear that the current Certificate IV in Property Services (Real Estate) is adequate for an agent who sells or manages property or acts as a buyer's agent. The panel is also satisfied that the current equivalent Certificate IV qualifications in business broking and stock and station agency are adequate for people who sell rural property or are engaged in the sale of businesses.<sup>1</sup> The panel is not convinced that the current Certificate IV qualification is appropriate for strata community managers and supports the adoption of the recently developed Certificate IV in Strata Community

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<sup>1</sup> While accepting that the qualifications are appropriate, the panel recommends that the recently developed unit of competency Handle Client Funds, which is available in draft from the Commonwealth Government, be an additional mandatory component for each of these qualifications.

Management as the appropriate qualification for people working in this occupational category, once it is endorsed by the Australian Industry Skills Council (AISC).

However, where a real estate or stock and station agent is involved in running a business and has primary responsibility for client funds, business or staff management, the Diploma in Agency Management, which includes units on human resources and business management, provides the appropriate level of training. In the case of strata community managers who manage a business, the appropriate qualification will be the new Diploma in Strata Community Management, which is also under consideration by AISC.

One of the key weaknesses identified in the current training provided by Registered Training Organisations (RTOs) servicing the property sector is the lack of a clear connection between the skills delivered in off the job settings (including online and face to face learning environments) and the practical application of those skills in real work environments. For this reason, the panel has come to the view that there is a need for a period of experience during which skills can be applied and demonstrated in the workplace. However, the panel is concerned about the inflexibility of a fixed time period where there is no defined activity. The panel supports an open-ended period of practical experience, consistent with competency based training principles, during which a person will obtain evidence of the attainment of practical skills.

Many stakeholders expressed concern about the quality of training provided by RTOs for licensed occupations. In response, some stakeholders have expressed the view that an independent, external examination should be applied to all qualifications required for licensed occupations, particularly those relevant to the real estate sector. The proponents of this view see this as a way of ensuring the quality and reliability of qualifications issued by RTOs. While acknowledging the potential benefits of this suggestion, the panel does not see the implementation of an examination system as feasible or consistent with contemporary competency based training concepts.

The panel does note that the recent reforms to Training Packages, in which assessment requirements are clearly specified in each unit of competency, should go some way to addressing the concerns about assessment quality and consistency. The panel believes that it is important to support the existing national training framework and working within that system to improve standards and the associated assessment arrangements, is a preferable and more realistic pathway.

Improvements can be made to the design of Training Packages, particularly those changes that will make the assessment of competence easier for people to implement and understand. However, this approach is reliant upon effort and commitment by both industry and government to work within the national training system.

The majority of stakeholders who responded to this review supported continuing professional development (CPD) as a valuable tool for the dissemination of knowledge and the maintenance of skills. One exception to this is the stock and station agency sector which called into question the value of CPD for certain classes of licensed occupations, particularly those engaged in the sale of livestock. The panel agreed with this view and amongst a

number of other reforms, which are detailed in this report, has recommended that certificate holders and licensees in this sector be exempted from the existing CPD arrangements. Overall the recommended changes to the CPD arrangements are directed at ensuring that CPD is timely, relevant and of high quality. The proposed changes are detailed in this report.

It is the nature of any decision making process that there are compromises and this is true in relation to the recommendations made in this report. The members of the panel are individuals with personal views and every panel member has made some accommodation in the development of this document. From this perspective, the views in this report represent a majority, rather than a unanimous point of view.

This review has been challenging not only because of the complexity of the issues but also because of the short time frame in which the panel has been required to gather information and deliver this report. This report provides a clear direction but of necessity leaves some tasks for further development and refinement.

I thank all of the panel members for finding valuable time among other commitments and for their dedication to this project. I also thank those people who have taken the time to write submissions or to meet with the panel.

Finally, I would like to thank staff at Fair Trading who provided information, encouragement and support for travel, accommodation and meeting venues both in Sydney and in regional New South Wales.

A handwritten signature in black ink that reads "Chris Batt," with a comma at the end. The signature is written in a cursive, slightly slanted style.

**Chris Batt (Panel Chair)**

## 2. Recommendations

1.1	That Fair Trading continues to utilise the national training framework as the requisite qualifications for certificate and licence holders in the property services industry .....	13
1.2	That industry takes an active role in developing the units of competency and qualification requirements for licensed property occupations .....	13
1.3	That Fair Trading takes an active role in the development of training standards for the property services industry; and .....	13
1.4	That Fair Trading gives priority to the development and maintenance of a formal relationship with ASQA. ....	13
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### 3. The review process

In 2015, The Commissioner NSW Fair Trading, Mr Rod Stowe commissioned a review of training in the New South Wales property services industry. A panel was appointed to undertake the review. The members of the panel were:

- Chris Batt (Chair)
- Tony Rowe – Director BPG Group Pty Ltd, nominated by Estate Agents Co-operative (EAC)
- Hera Antoniadou – Senior Lecturer University of Technology Sydney nominated by the Real Estate Institute of New South Wales; and
- Rob Stowell – Director Learning Australia Pty Ltd nominated by Australian Livestock and Property Agents Association Ltd.

The key role of panel members was to make recommendations on matters detailed in the terms of reference for the review. The terms of reference are detailed in Appendix 1. The key issues that were considered by the panel were:

- Entry level standards and minimum education requirements for the property services industry
- Continuing professional development
- How and by whom training is provided and assessed; and
- Mutual recognition and cross border issues for stock and property auctioneers.

#### Consultation process

In November 2015, the training panel released a consultation paper and invited submissions on the issues detailed in that paper. Key stakeholders were advised of the availability of the paper and copies were provided through the Fair Trading website. The availability of the paper was also highlighted through the media.

#### Written submissions

A number of written submissions were received from stakeholders including some training organisations, individuals and real estate businesses. Key stakeholder submissions included the REINSW, EAC, ALPA and the SCA.<sup>2</sup> A complete list of responses is provided at Appendix 2.

#### Face to face discussions

In addition to seeking written submissions on the issues raised in the consultation paper, invitations were extended to key stakeholders to meet with the panel. The panel also visited regional areas of NSW and Fair Trading promoted the opportunity to meet with the panel on their website and through the media.

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<sup>2</sup> Real Estate Institute of New South Wales (REINSW), Australian Livestock and Property Agents Association Ltd (ALPA), Estate Agents Cooperative (EAC), Strata Communities Australia (SCA).

The panel met in Sydney with representatives from ALPA, EAC, the SCA and the REINSW. The panel also met with a number of individuals.

The panel invited participants to present their views about the industry and then members asked questions and engaged in discussion. The discussions lasted from an hour to an hour and a half and the panel found them to be very informative.

The panel visited Coffs Harbour, Dubbo and Wagga Wagga. At each location, agents were invited to meet with the panel and although attendances were low, the panel thinks that the discussions were useful. Following these meetings the panel visited local real estate offices and talked to staff about their training and work experiences.

Further details about the conversations and observations made by the panel during face-to-face consultations are provided at Appendix 4.

### Meeting with Australian Skills Quality Authority

During the review, Chris Batt (panel chair) and Rob Stowell (panel member) met with Chris Robinson, Chief Executive Officer (CEO) of the Australian Skills Quality Authority (ASQA) and Kavita Dayal, Acting Manager of Industry Engagement, to discuss training standards. In this discussion, the CEO said that there are few complaints about NSW property services training and that ASQA is not aware of significant issues in the property services sector in the context of the national training environment.

The panel members explained that one of the key issues and causes for complaint from industry is the short time taken, by some RTOs in the sector, to deliver training units. The CEO said that there is a range of performance criteria that RTOs must meet to maintain registration. However, as the current property services industry Training Package does not specify a minimum unit delivery time, ASQA is unable to use time as a performance criterion or as part of its audit process.

The meeting also discussed the feasibility of creating additional NSW based requirements for training delivery. It was pointed out that under mutual recognition, units within the industry-training package could be completed in any Australian jurisdiction. This means that, as long as the required training is for units within the industry training package, people are able to complete units online or through distance education in another jurisdiction and avoid any additional state based requirements.<sup>3</sup>

A further discussion took place about the value of establishing a more formal relationship between Fair Trading and ASQA to deal with complaints. It was agreed that this would be a valuable approach.

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<sup>3</sup> An understanding of the legislation applicable in the jurisdiction in which the participant resides and works is a condition of achieving competence. Mutual recognition allows free movement between jurisdictions for similar licensed occupations, subject to the laws of the jurisdiction.



## 4. The National Training Framework

### The Australian Training Framework – National Training Package

As detailed in the discussion paper,<sup>4</sup> the minimum educational requirements for licensed and registered property occupations in New South Wales are based on units of competency and qualifications in the Property Services Training Package.<sup>5</sup>

The current Property Services Training Package was developed and maintained by the Construction and Services Industry Council (CPSISC), and sets out a suite of qualifications for people working in the real estate, stock and station, business broking, facilities management and strata community management sectors.

### New standards for training packages

The Property Services Training Package was being redeveloped in 2015 to comply with the Standards for Training Packages. These new standards provide the basis for the design and development of packages and the standards include a number of changes to the format and content of the units of competency, designed to improve the quality of Training Packages qualifications.

A draft version of the revised qualifications and associated units of competency for the real estate, stock and station, strata community management and business broking sectors was released in late 2015. It is understood that work on the development of the Training Package has been suspended pending the implementation of new national training advisory arrangements. However, CPSISC has advised that three new qualifications for the strata community management sector were endorsed by industry and were submitted to the Australian Industry and Skills Council (AISC) in December 2015 for registration and listing on the national register of qualifications.<sup>6</sup>

A key feature of the new Standards for Training Packages is the strengthening of the assessment requirements in the units of competency. The panel is confident that this reform and the implementation of the Standards for Training Packages will provide greater clarity for those delivering and assessing training packages qualifications in the property industry. However, the shift in responsibility from training package development and management from CPSISC to Artibus, the newly appointed Skills Services Organisation (SSO) for the property industry, may result in some delay to this development.

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<sup>4</sup> Paper published by panel in Nov 2015.

<sup>5</sup> <https://training.gov.au/Training/Details/CPPO7>

<sup>6</sup> As a result of recent Vocational Education and Training reforms currently being implemented by the Commonwealth Government, CPSISC is no longer funded to provide advice in relation to the Property Services and the Construction, Plumbing and Service Training Packages. Artibus Innovations is now the Skills Services Organisation (SSO) and will undertake the development and maintenance of Training Packages previously managed by CPSISC.

## Stakeholder Submissions

A number of respondents pointed to problems with the quality of training delivery and assessment for licensed occupations in the property industry.

The key problems, relating to training delivery and assessment, raised in the submissions were:

- Recognition of prior learning (RPL)
- Online delivery and assessment; and
- Lack of assessment quality assurance.

A number of respondents to the discussion paper offered practical suggestions for strengthening the quality of training delivery and assessment arrangements. These suggestions included:

- Improved trainer skill; and
- Independent external caps stone examinations.

However, another respondent stated that they see “...no reasons to make any changes to the delivery of assessment and training for the property services industry.” They argue that what is needed is a better understanding of the national training structure in particular by the regulator. They go on to say that the new Property Services Training Package makes the assessment requirements clearer and will deliver more robust training and assessment.

It was pointed out that over the next two years, ASQA will complete its first round of RTO audits and that this process will continue to improve training standards. They conclude that, “Basically, there is no reason for Fair Trading to bring in extra regulatory requirements for RTOs as ASQA as the national regulator will be in the process of completing audits for all RTOs.”

Another respondent echoed this general approach but said that the present training package (CPP07) allow too much interpretation of assessment practices to the RTO. They explained that a review of the national training package has identified this as an issue and that the new training package is much more prescriptive in the way that RTOs are to assess competency. They state that “...many of the critical comments made by some commentators show they do not understand the framework of Competency Training in Australia especially when it comes to recognition of prior learning...”.

They conclude that many of the changes currently being made to the existing training package will more than adequately address the issues and criticisms raised. These changes include more specific assessment practices coupled with the 2015 NVR standards and a more proactive stance by ASQA auditors of the compliance and assessment tools being used by RTOs.

As mentioned earlier in this report, a meeting was held with ASQA and the organisation was invited to make a submission to the review. The submission is also available on the Fair Trading website.

The ASQA submission provided some brief contextual information as follows:

The Australian Skills Quality Authority (ASQA) is the national regulator for the vocational education and training (VET) sector. It is the regulatory body for registered training organisations (RTOs) in a number of jurisdictions including New South Wales.

Registration with ASQA allows an RTO to deliver and assess nationally. An RTO does not have to have a head office in New South Wales to deliver training in that state. However, according to ASQA there are 55 RTOs with a head office in New South Wales. Since July 2011 ASQA has conducted 108 audit activities on 42 of these 55 RTOs. As a consequence changes were made to address non-compliance.

ASQA points out that the *Mutual Recognition Act 1992* allows people who hold a license in one jurisdiction to obtain a license in another. Where the licensing requirements vary, “...people will

continue to cross borders to attain licences in jurisdictions with fewer requirements, driving distortions in where training is occurring...”.

ASQA goes on to say that there are a number of issues that should inform a review of training standards and will assist to strengthen relevant training packages. These apply across the VET sector but are useful considerations for the property sector. These issues in brief are:

- A lack of clarity in the training package
- A prevalence of extremely short training courses
- Inaccurate and poor assessment strategies
- Trainers not holding necessary training and assessment competencies
- Trainers not being able to demonstrate currency in industry experience
- Assessment conducted in a simulated environment which not does adequately reflect the real life environment; and
- Literacy and numeracy skills of the learners.

ASQA also suggests that the panel consider incorporating a work placement or mandatory practical requirement in the qualification. This might also be achieved through a provisional licensing arrangement.

ASQA also details a number of problems in the delivery of training, which might be further identified in a future audit of this industry sector. These include:

- Inconsistent delivery times
- Issues regarding legislative requirements and mutual recognition
- Insufficient training in practical components such as auctioning
- Poor assessment tools that do not meet competency requirements; and
- Poor assessment practices.

ASQA recommends strengthening the units of competency requirements by:

- Defining activities to guide RTOs in developing appropriate training and assessment strategies including adequate amount of training
- Strengthening the Range Statement and Context of Assessment<sup>7</sup> with clear conditions and resources aligned to current industry requirements to ensure graduates meet industry expectations
- Articulating clear assessment requirements to ensure sufficient collection of evidence to determine competency;<sup>8</sup> and
- Providing further and clear guidance to trainers and assessors on the requirements.

The progression of these changes rests largely with the people responsible for developing this training packages and industry has a clear role to play in this process. However, ASQA also suggests that the regulator take an active role in this development.

## Panel’s conclusions

The panel understands that there is concern about the quality of the delivery of training by some RTOs in the New South Wales property services industry. It also acknowledges that there are issues with the standard of delivery, particularly the time taken to deliver training and the method of assessing competence. The panel believes that there are improvements that can and should be made to the delivery of training and to the assessment process.

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<sup>7</sup> This suggestion is superseded by the new standards for training packages. Range statements or context of assessment will not be part of the new standards. An optional range of conditions replaces range statements. A subsection in the assessment requirements called assessment conditions replaces context of assessment.

<sup>8</sup> The new Standard for Training Packages will achieve this outcome.

The panel also notes the observation by ASQA that there is a tension between the delivery of consistent national training and the inconsistency of state and territory licensing and property related law. Coupled with mutual recognition, this tension also creates an opportunity for skewed market responses and some of these impact on the training environment.

However, the panel is of the view that the proposed changes to the assessment process for the property services occupations and the implementation of the Standards for Training Packages will provide greater clarity for those delivering and assessing training package qualifications in the property industry, notwithstanding that the timetable for these improvements is unclear. However, industry and the regulator in NSW can play a role in supporting these changes through the new SSO.<sup>9</sup>

In addition to the implementation of the Standards for Training Packages, there is a national consultation process currently underway which is focused on improving Vocation, Education and Training (VET) assessment.

In November 2015, COAG agreed on a process for consulting with VET stakeholders and all jurisdictions on reform options to improve assessment in VET. Areas for investigation include strengthening the skills of VET trainers and assessors, improved validation of assessment, including potential for greater industry involvement, and options for tougher regulatory interventions.

A discussion paper has been released titled, Quality of assessment in vocational education and training<sup>10</sup> inviting stakeholder views on reforms to improve the conduct of assessment in VET. Responses to the paper will inform the working group's advice to the Minister on options to improve assessment in VET. The Minister's report will in turn inform further consideration by the COAG Industry and Skills Council.

The panel is of the view that Fair Trading as the property industry regulator in NSW should continue to rely on the qualifications contained in the National Training Package and continue to support their delivery through RTOs and their supervision and management by ASQA. However, there are changes that can and should be made to aspects of the training package. In particular the panel notes a recommendation by ASQA that the units of competency requirements be strengthened by:

- Defining activities to guide RTOs in developing appropriate training and assessment strategies including adequate amounts of training; and
- Providing further and clear guidance to trainers and assessors on the requirements.

As previously mentioned, the key feature of the new Standards for Training Packages is the strengthening of the assessment requirements in the units of competency. The panel is confident that this reform and the implementation of the Standards for Training Packages will provide greater clarity for those delivering and assessing training package qualifications in the property industry.

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<sup>9</sup> The new Skills Services Organisation (SSO) for the property industry is Artibus Innovation.

<sup>10</sup> The paper can be obtained from <https://docs.education.gov.au/node/39446>

The panel also notes the suggestion made by ASQA that the panel consider the following matters:

- Incorporate a work placement or mandatory practical requirement in the qualification; or
- Issue a restricted (interim/provisional) licence, as deemed appropriate, and upon completion of the time based requirement issue an unrestricted (full/open) licence.

The panel will explore this matter further under the discussion on experience on page 32 of this paper.

The changes currently underway will address many of the issues raised by respondents. However, implementing the further changes proposed by ASQA will take time and will involve further effort and involvement by industry through Artibus which now has responsibility for developing the Property Services Training Package. It is also important that Fair Trading takes an active role in the development of these changes and in the development of appropriate training standards.

Finally, it is important that Fair Trading focuses on developing a more robust relationship with ASQA that is directed towards improving communication and information sharing about issues relating to this industry sector. This will also assist Fair Trading in its role in supporting the improvement of training standards.

## Recommendations

- 1.1 That Fair Trading continues to utilise the national training framework as the requisite qualifications for certificate and licence holders in the property services industry
- 1.2 That industry takes an active role in developing the units of competency and qualification requirements for licensed property occupations
- 1.3 That Fair Trading takes an active role in the development of training standards for the property services industry; and
- 1.4 That Fair Trading gives priority to the development and maintenance of a formal relationship with ASQA.

## 5. A framework for determining minimum standards

The consultation paper explored the reasons for licensing occupations and identified competition policy as an important guide for decisions relating to licensing. It was pointed out that all State and Territory Governments have entered into agreements with the Commonwealth about the way in which legislation is developed and the agreed approach is detailed in the *Competition Principles Agreement 1995*.

This agreement means that governments should not restrict competition through legislative enactment and where they do restrict competition, will follow a set of clear rules and principles. These rules have specific relevance to occupational licensing as minimum entry standards for the property services industry are applied through legislation and must comply with competition policy principles.

In simple terms, any form of licensing is a restriction of competition in the market. That restriction can be justified only where there is a specific need to protect the public interest and where the benefit of that intervention outweighs the cost or the impact of that restriction. This cost-benefit analysis forms the basis for a framework to consider the question of minimum entry standards.

The consultation paper proposed a hierarchy of risks to guide decisions about which risks should be addressed through mandatory training. The panel identified four levels of risk. Risk One is the highest and Risk Four is the lowest risk.

These risks are:

- Level One Risk:** Conduct or behaviour prohibited by the PSBA
- Level Two Risk:** Conduct or behaviour prohibited by other Acts administered by Fair Trading
- Level Three Risk:** Conduct or behaviour prohibited by other state departments or other governments
- Level Four Risk:** Conduct which is not prohibited but could contribute to consumer detriment. (This might include poor business management or poor quality supervision.)

Where a risk is a Level One risk, then it is more likely that there needs to be training to address this risk. Where a risk is a Level Two risk, there is a solid argument for mandating training but this would depend on what other avenues are already available to manage that risk. Where a risk is a Level Three or Four risk, then the presence of that risk would be persuasive rather than conclusive.

## Stakeholder submissions

There were varied views about the risks involved in this industry and whether training should be based on risk.

For example, one respondent felt that the consultation framework around risk was too narrow and proposed that risks should include matters regulated outside of Fair Trading such as work, health and safety and business risks.

Other respondents were uncomfortable about the notion that licensing should be based on risk to consumers and argued that the removal of barriers to entry has contributed to the current problem. The respondent suggested that 'risks were incalculable' and discussed examples of detrimental behaviour which would be reduced by a higher level of training.

Nevertheless respondents were able to identify some key risks, which included:

- A loss of integrity for a business as a result of a fraudulent employee
- the role of the licensee-in-charge
- tribunal matters, lessor and lessee issues, disclosure of material fact, retail and commercial leases and risk management and liability
- the national training framework and the process for delivery of training
- the quality of trainers and the quality of training
- negligence
- failure to follow instruction to obtain adequate instructions
- failure to explain fully the terms of agency agreements; and
- errors in entering into contracts when exercising the functions conferred in relation to residential property under s 64 of the *Property, Stock and Business Agents Act 2002*.

## Panel's conclusions

### The role of competition policy and the Independent Pricing and Regulatory Tribunal

There has been some debate about the role of competition policy in guiding the panel's decision about minimum standards. Indeed it has been proposed that the panel should disregard consideration of competition policy or the Independent Pricing and Regulatory Tribunal (IPART)<sup>11</sup> requirements because the terms of reference did not explicitly make reference to them. One respondent blames current problems in the industry on competition policy and specifically on the removal of barriers to entry.

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<sup>11</sup> The following Licensing Framework is proposed by IPART as an assessment tool for existing and proposed licences. It consists of four stages, which require a regulator to:

- justify that government action is required to address a specific problem or risk and that licensing is appropriate (**Stage 1**)
- assess whether the licence is well designed – taking into account how its objectives relate to its coverage, duration, reporting requirements, fees and charges, conduct rules and mandatory attributes (**Stage 2**)
- assess whether the licence is administered effectively and efficiently (**Stage 3**)
- confirm that licensing is the best response when comparing its costs and benefits against other options (**Stage 4**).

A competition policy view in simple terms proposes that minimum education standards are those that are needed to protect the public interest. This in turn is determined by defining the risk to the public that arises from inappropriate conduct. Mandatory training can be supported where the benefit of reducing the risks to the public outweigh the costs to business.

An alternate view, presented by stakeholders, is that minimum education standards are those that will create a professional industry. This view is largely driven by a view that the higher the educational standard, the greater the level of professionalism. Similarly, there is a view that the public at large will have more confidence in a person with higher than lower qualifications.

Higher education standards may be a component of professionalism, particularly where imposed by an industry as a condition of membership. However, if we accept that more education is desirable, how much education do we need? Further, as higher education standards impose costs on individuals and businesses, it becomes more difficult to argue that the benefits outweigh the costs, particularly where the additional education does not address a specific risk. Higher education as a mandatory requirement also creates significant barriers to market entry.

Governments, including the New South Wales government, are obliged to operate within boundaries and competition policy is one of these boundaries. Similarly, the NSW government has agreed to review licensing to ensure all licensing regimes comply with the IPART principles published in 2015.

The panel does not see any value in making recommendations that government is unable to implement and for this reason it must be mindful of competition policy in making any recommendation. It is not within the scope of the panel's role to debate or to challenge competition policy and it is obliged to accept that this is a boundary within which government must operate and within which the panel's recommendations are made.

Nevertheless, the panel applauds the industry's desire to increase professionalism. However, it is of the view that this is a task for industry and not a role or a function of licensing. It also believes that Strata Community Australia (SCA) has shown significant leadership in adopting a voluntary accreditation scheme that applies to its members. The panel would encourage other industry associations to review the SCA submission with a view to adopting a similar approach.

### Applying the model – an assessment of risk

There are clearly a considerable number of risks that are relevant to the activities of certificate and license holders. An outline of the provisions of the *Property, Stock and Business Agents Act 2002* (the PSBA) provides a broad list of prescribed conduct and prohibited behaviour. Sections 28 to 53E define the general conduct of licensees and registered persons. Sections 54 to 62 deal with agency agreements. Sections 63 to 76A deal with residential property and rural land sales and sections 77-84 deal with auctions. Part 7



and 8 deal with trust accounts and records respectively.<sup>12</sup> The panel's view is that these issues should be covered in any mandatory training requirement for licensees.

In addition, there are specific obligations and requirements under the *Residential Tenancies Act 2010*. The panel has heard from a number of respondents that residential tenancy law requirements are complex and are often overlooked because of a focus on residential sales. Matters that should be covered in any mandatory training requirement for licensees include residential tenancy agreement, bond lodgement and claims, and dispute resolution.

In addition to the PSBA Act and the Residential Tenancies Act, there are also relevant requirements in the *Fair Trading Act 1987* and the *Australian Consumer Law* dealing largely with market issues such as misleading and deceptive practices. The panel is also clear that these matters should be covered in any mandatory training requirement for licensees.

Further, there are specific issues and risks that are relevant to different sectors of the property market and these represent risks and have potential for consumer detriment. For example, it is appropriate that real estate agents have an understanding of conveyancing practices and law. It is also important for strata managers to have an understanding of the *Strata Schemes Management Act 1996*<sup>13</sup>. Further, selling rural properties, selling businesses or acting as a buyer's agent all require specific knowledge and skill. For this reason, these areas should also be covered as part of any minimum educational standard for licensees.

However, with respect to laws covered by other departments or governments, it is less clear that these should be covered by minimum standards. This does not mean that these issues are not important. However, if we follow the proposal that there should be mandatory training for all of these matters, we end with a need to provide training for everything. The notion that risks are 'incalculable' simply avoids the issue and suggests that training should be infinite. There must be some logical boundary and the legislation administered by the licensing authority would seem to be an appropriate point of delineation.<sup>14</sup>

The panel is of the view that where legislation administered by other departments or governments is important and creates a specific risk to consumers, that it should be the subject of mandatory professional development. Significant issues might include anti-discrimination and work health and safety provisions.

The final category is risk that may result in consumer detriment but are risks that apply to any business. These risks arise from managing people, selecting staff and providing leadership. Others issues include risk management and strategic planning.

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<sup>12</sup> Further detail relevant to these requirements is contained in the PSBA regulations and the regulations for other Acts. However, regulations are made under authority of the statute and contain further detail rather than new policy.

<sup>13</sup> Once commenced, the new *Strata Schemes Management Act 2015* will replace this existing 1996 Act.

<sup>14</sup> However, qualifications in the Training Package currently extend beyond areas for which there are identified risks. For example, [CPPDSM4007A – Identify legal and ethical requirements of property management to complete agency work](#), provides in the range statement for the delivery of information about relevant federal, and state and territory legislation and local government regulations relating to: anti-discrimination and equal employment opportunity. This is a core unit in the CPP40307 – Certificate IV in Property Services (Real Estate). Fair Trading has also provided CPD training in anti-discrimination laws.

These are risks that arise only for the licensee-in-charge and where there are business management and supervisory responsibilities.

The following table details the key risks that arise in the property services industry.

<b>Key risks in the property services sector as detailed in the PSBA, the Residential Tenancies Act the Fair Trading Act and the Australian Consumer Law</b>
General conduct of licensees and registered persons
Agency agreements
Residential property and rural land sales
Auctions
Trust accounts and records
Fair Trading and Australian Consumer Law requirements
Residential tenancy law
Strata Schemes Management Act
Conveyancing Act

**Table 1 – Key risks in property services sector**

Table 2 provides details of the core units for the relevant certificate that comprise the Property Services Training Package. These are: CPP40307 - Certificate IV in Property Services (Real Estate); CPP40407 - Certificate IV in Property Services (Stock and Station Agency); Certificate IV in Strata Community Management;<sup>15</sup> and CPP40507 Certificate IV in Property Services (Business Broking).

<b>CPP40307 - Certificate IV in Property Services (Real Estate).</b>	<b>CPP40407 - Certificate IV in Property Services (Stock and Station Agency)</b>	<b>Certificate IV in Strata Community Management 13 Core units plus 5 electives</b>	<b>CPP40507 Certificate IV in Property Services (Business Broking)</b>
CPPDSM4007A - Identify legal and ethical requirements of property management to complete agency work  CPPDSN4008A - Identify legal and ethical requirements of property sales to complete agency work  CPPDSM4009A - Interpret legislation to complete agency work  CPPDSM4015B - Minimise agency and consumer risk	CPPDSM4008A - Identify legal and ethical requirements of property sales to complete agency work  CPPDSM4009B - Interpret legislation to complete agency work  CPPDSM4015B - Minimise agency and consumer risk  CPPDSM4021A - Sell and finalise sale of rural property by private treaty  CPPDSM4024A - Advise	BSBFIA402A - Report on financial activity  BSBRKG304B - Maintain business records  CPPDSM3016A - Work in the property industry  CPPDSM3017A - Work in the strata/community management sector  CPPDSM3019B - Communicate with clients as part of agency operations	CPPDSM4006A - Establish and manage agency trust accounts  CPPDSM4015B - Minimise agency and consumer risk  CPPDSM4029A - Appraise business  CPPDSM4053A - List business for sale  CPPDSM4060A - Negotiate sale and manage sale to completion or settlement

<sup>15</sup> Certificate IV is the new qualification for strata community managers which is awaiting endorsement by AISC. AISC meets next in Sydney on 21 and 22 March although it is not known whether this qualification will be endorsed at this meeting. If endorsed this qualification will replace CPP40611 Certificate IV in Property Services (Operations).

CPPDSM4080A - Work in the real estate industry	clients on livestock sale and purchase options  CPPDSM4039A - Conduct livestock sale by auction  CPPDSM4052A - List and market rural property for sale or lease  CPPDSM4067A - Plan for and complete sale of rural property by auction  CPPDSM4068A - Prepare livestock for sale at saleyards  CPPDSM4075A - Select livestock for sale CPPDSM4077A - Sell livestock by private sale CPPDSM4081A - Work in the stock and station agency sector	CPPDSM4009B - Interpret legislation to complete agency work  CPPDSM4044A - Coordinate maintenance and repair of properties and facilities  CPPDSM4045A - Facilitate meetings in the property industry  CPPDSM4056A - Manage conflict and disputes in the property industry  CPPDSM4057A - Monitor a safe workplace in the property industry  <b>New unit</b> - Assess maps, plans and building documentation for use in strata community management  <b>New unit</b> - Administer insurance for strata communities <b>Note:</b> include building defects  <b>New unit</b> - Administer funds held in trust in strata community schemes	CPPDSM4061A - Obtain prospects for listing  CPPDSM4069A - Promote and market listed business
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**Table 2 – Core units for Certificate IV**

It would be impractical to detail in this report the content of all units listed in Table 2. Details of the unit titled CPPDSM4008A - Identify legal and ethical requirements of property sales to complete agency work is available at <https://training.gov.au/Training/Details/ CPPDSM4008A>.

This document is worth examining because the significant detail in this unit is typical of other units in this package. Although there is criticism of the delivery of units by some RTOs, few people raised concern during the consultation about the content of the training package. Where concerns were raised about content, it was generally found that the issue related to delivery rather than content.

The following detail is an extract from the Evidence Guide for the CPPDSM4008A unit.

**Critical aspects for assessment and evidence required to demonstrate competency in this unit.**

A person who demonstrates competency in this unit must be able to provide evidence of:

- ability to communicate effectively and accurately with clients
- application and knowledge of ethical and conduct standards and key principles of consumer protection and privacy in relation to the sale of property
- application and knowledge of the sales process, including ways of obtaining listings, methods of selling property, strategies for marketing property, and the process for settling the sale of property
- application and knowledge of accurately completing statutory and agency sales documentation, including authorities and contracts
- application and knowledge of the legislation and regulatory framework relevant to the sale of property
- application and knowledge of the role and responsibilities of the agent in the sale of property, including the legislative restrictions on agents purchasing property and the controls and sanctions associated with secret commissions.

In examining all the core units, the panel is of the view that the current Certificate IV in Property Services (Real Estate) is adequate for an agent who sells or manages property or acts as a buyer's agent. The panel is also satisfied that the current equivalent Certificate IV qualifications in business broking and stock and station agency are adequate for people who sell rural property or are engaged in the sale of businesses.<sup>16</sup> The panel is not convinced that the current Certificate IV qualification is appropriate for strata community managers and supports the adoption of the recently developed Certificate IV in Strata Community Management once it is endorsed by the Australian Industry Skills Council as the appropriate qualification for people working in this occupational category.

Further, if there are gaps, it is clear that the Diploma of Property Services (Agency Management) does not fill these gaps. The Diploma is largely identical to the Certificate IV other than the inclusion of 11 Diploma level units<sup>17</sup> that relate to business and staff management. These would clearly be important to managing risks associated with the role of licensee-in-charge.

Although the analysis of risk leads to the conclusion that the Certificate IV is an adequate qualification for a licensee, it does identify that there are gaps in the knowledge of certificate holders. If licensees comply with their supervisory obligations under the PSBA, this should not translate into a risk for consumers. However, there are issues with the level of supervision by industry and this is further discussed on page 24 of this paper.

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<sup>16</sup> While accepting that the qualifications are appropriate, the panel recommends that the recently developed unit of competency CPPDSMRE02 - Handle Client Funds, as part of agency operations, which is available in draft from the Commonwealth Government, be an additional mandatory component for each of these qualifications.

<sup>17</sup> There are 11 possible electives at the Diploma level but in reality it is possible to meet the Diploma level qualification with only 4 units at that level, under the existing national packaging rules.

## Recommendations

- 2.1 That the risks identified in property services industry for a licensee are adequately covered by the relevant Certificate IV qualifications in the CPP07 Property Services Training Package with the exception of the qualification for strata community management.
- 2.2 That the additional risks identified in the property services industry for the licensee-in-charge, are adequately covered by the Diploma level, in the CPP07 Property Services Training Package.
- 2.3 Where legislation administered by other departments or governments is important and creates a specific risk to consumers, that it should be the subject of mandatory professional development.

## 6. Entry standards

### Current licence and certificate categories for the property services industry in New South Wales

The *Property, Stock and Business Agents Act 2002* (the PSBA) sets out the licenses and registrations that are required for persons to engage in regulated property services occupations in New South Wales. These licenses and registrations are detailed in the table below.

Occupational area	Licence	Certificate of Registration
Real Estate Agency	Real estate agents licence	Real estate salesperson
	Real estate agents licence subject to the condition that the holder act only as a buyer's agent	
	Auctioneer accreditation (real estate agent accreditation)	
Stock and Station Agency	Stock and station agent licence	Stock and station salesperson
	Auctioneer accreditation (stock and station agent accreditation)	
Business broking	Business agent licence	Business salesperson
Strata Community Management	Strata managing agent licence	Strata manager or registered community manager
	On-site residential property manager	Registered on-site residential property manager

**Table 3 – Licences and registrations in NSW**

The minimum educational qualifications for relevant licenses, certificates of registration and for accreditation as an auctioneer are set out in the *Property Stock and Business Agents*

(Qualifications) Order 2009 (the Qualifications Order). A description of the role of each category is detailed in the PSBA. Further details of the current qualifications are contained in pages 5 to 8 of the Consultation Paper.

## Stakeholder Submissions

There was considerable variety in responses from stakeholders as to what minimum educational standard should be for each existing licence category. However, most respondents proposed that the initial entry standards for certificate holders be increased. The rationale varied but most believed that additional training would make people job ready and better able to perform their roles.

In general, respondents proposed that the current three or four units be increased to seven units. The specific units proposed by EAC and the REINSW are detailed below in Table 4.

Code	Details
CPPDSM4080A	Work in the real estate industry
CPPDSN4008A	Identify legal and ethical requirements of property sales to complete agency work
CPPDSM4007A	Identify legal and ethical requirements of property management to complete agency work
CPPDSM3019D	Communicate with clients as part of agency operations
CPPDSM4003A	Appraise property
CPPDSM4022A	List property for lease
CPPDSM4012A	List property for sale

**Table 4 – Proposed entry requirements for real estate salespersons**

Think Real Estate proposed that the existing entry units for all categories be retained but with the addition of the following three units as detailed in Table 5.

Code	Details
CPPDSM4009B	Interpret legislation to complete agency work
CPPDSM4015B	Manage agency and consumer risk
CPPDSMRE02	Handle client funds as part of agency operations <sup>18</sup>

**Table 5 – Proposed additional units for all certificate categories**

SCA proposes that the strata managers should complete the Certificate III in Property Services (Operational) while ACE proposes that entrants complete the Certificate III in Strata Community Management.

ALPA proposes that entrants to the stock and station agents' salesperson complete a Certificate III in Agency Support.

The rationale for these additional units largely focused on increasing the skills of entrants. A number of respondents also proposed that entrants should receive a provisional status and complete an additional 17 units to complete the Certificate IV. On completion of the additional 17 units and the passage of two years, this provisional status would be removed and a full certificate issued. One respondent described this process as a form of apprenticeship.

This proposal would effectively raise the current requirements for a certificate holder from 3 or 4 Certificate III units to the Certificate IV qualification. However, SCA and ALPA proposed that a Certificate III would be adequate as an entry point. SCA detailed an existing industry certification scheme that supported professional development of their sector.

<sup>18</sup> This unit is a new unit and part of the revised training package that is yet to be approved.

One respondent suggested that increasing the entry level requirements to seven units for real estate agents would reduce churn and launch the entrant on the journey to acquiring the requisite skills to provide a quality service. They further proposed that completing the additional training would make new entrants job ready. Presumably, the increased commitment to gain entry to the industry would make applicants more willing to commit to a career.

One of the arguments for increasing entry standards for certificate holders is that there is not really any difference in the roles and expectations of certificate holders and licensed agents. The respondent disagreed with the contemporary view that the licensee-in-charge is responsible for the supervision of certificate holders and inexperienced agents. Indeed the respondent goes on to say that, "...a review of the Act will dispel that theory, there is no granular supervision expectation...".

However, another respondent said that, "...it is abundantly clear that the final responsibility for running the business rests with the LIC...this responsibility is either not understood or ignored by many licensees."

Another respondent stated that, "When looking at the current training regime we need to separate the scaremongering from the reality". The argument that "as agents do not supervise their staff adequately, justifies an increase in entry standards is ridiculous. This is a compliance and enforcement issue not a training issue."

#### Licensee

A number of respondents proposed that a licensee should have a Diploma. There was little explanation of why the Diploma would provide a better training outcome than the current Certificate IV beyond a view that this higher standard better equipped the licensee to perform their roles. One respondent said that, "There is a reasonable market expectation that the services offered by the licensed agent are superior to the agent holding a certificate only. The market expectation and the licensed agent's desire to distinguish themselves need to be supported by tangible education and experience."

There appears to be a view that a Diploma had more status than a Certificate IV and that the community would have more confidence in a person with a Diploma than a Certificate IV. None of the respondents provided an analysis of what the content or educational difference is between the two qualifications.

However, one respondent clearly stated, "Our policy position is that when conducted in line with the training requirements, the Cert IV is adequate." They went on further to state that, the "Diploma precludes the resolution of the risks that have been identified as an issue. Quantity will not solve the issue of quality, which is focused around training and assessment...making changes which appear on the surface to 'make property services' a higher level profession (i.e. Diploma only entry) is not the answer."

In addition, one respondent said that it would be "...perilous to expose the Diploma of Property qualification to potential rorting of the VET-Fee Help scheme, which has been seen recently. RTOs of a dubious nature, which currently have issues with quality may see this as an opportunity to access funding, as it is primarily available to RTOs who conduct Diploma level training."

Another respondent said that "there may be an argument for the LIC to have a Diploma". However, "For the remaining agents who do not run a business, nor plan to run a business, a Diploma may be seen as overkill. The risks identified in the consultation paper are adequately dealt with in the Cert IV."

#### Licensee-in-Charge

Almost all respondents argued that the Licensee-in-Charge should have a Diploma. Largely, it was agreed that the responsibility for supervision, the management of trust accounts and the management of a business necessitated a higher level of training and skill than the ordinary licensed person.

One respondent said that they are concerned about “...the lack of differential education qualifications attached to the appointment of a licensee-in-charge.” This role requires “...greater knowledge and experience...”

#### Strata

There were two key submissions from organisations representing the interests of the strata sector of the real estate industry. One respondent said that the reality of strata management is completely different to other real estate sectors and that there are different consumer risks. These risks are largely about facilities management rather than about sales and property management.

They went further to say that educators, regulators, council and government have not understood the difference between the real estate sector and the strata sector and have used a one size fits all approach to education and licensing.

The key strata sector organisation supports the existing Certificate III qualification as the minimum entry standard for certificate holders and the Certificate IV for strata managers. However, they recommend that the Licensee-in-Charge should hold a Diploma.

SCA (NSW) provided details of their accreditation scheme, which was introduced in 2013. The details of this scheme are as follows:

##### Level 1 – Accredited Strata Community Manager (ASCM)

Membership of SCA (NSW) and adherence to the code of conduct  
NSW Certificate of registration

Minimum of 2 years membership with evidence of on the job or employee training, CPD where available and completion of a competency assessment

##### Level 2 – Certified Strata Community Manager (CSCM)

Membership of SCA (NSW) and adherence to the code of conduct

Minimum of 2 years experience plus Certificate IV in Property Services (Operation)

##### Level 3 – Practicing Strata Community Manager (PSCM)

Membership of SCA (NSW) and adherence to the code of conduct

No disciplinary action against member

Minimum of 5 years experience as a licensed strata managing agent in NSW

A relevant degree or higher

Currently Act as a licensee-in-charge

##### Level 4 – Fellow Strata Community Manager (FSCM)

Existing fellow and/or life members at the NSW Board’s discretion

## Panel’s conclusions

### Supervision

Proposals to increase the minimum educational requirements for certificate holders are based on a desire for certificate holders to possess a broader knowledge of the industry and to undertake a period of practical experience. Although this knowledge and experience may lead certificate holders to become property professionals rather than salespersons it also goes much further than simply increasing the educational standards and effectively creates a new category within the existing licence structure.



This proposal also appears to be underpinned by a view that the PSBA contains no significant supervisory expectation. As a consequence, it is argued, there is no substantial difference between the role and the obligations of certificate holders and licensees. The conclusion is that the level of training of certificate holders should be sufficient to allow them to act independently and fulfil all of the obligations of their roles, without supervision.

The panel accepts that supervision is frequently poor or absent altogether, although the panel did meet businesses where the supervisory and mentoring responsibilities were taken very seriously. However, the panel does not accept that the Act is unclear about the supervisory obligations of employers and in particular of the licensee-in-charge.

Section 3 of the PSBA defines:

- a real estate salesperson as an employee of a real estate agent
- a registered strata manager as an employee of a strata managing agent
- a stock and station salesperson as an employee of a stock and station agent
- a business salesperson as an employee of a business agent; and
- a registered community manager as an employee of a community managing agent.

Section 11 of the PSBA clearly states that “the holder of a certificate of registration must not act as or exercise any of the functions of a real estate salesperson, business salesperson or registered manager unless that person does so as an employee of the holder of a licence under this Act.” The section goes on to state that certificate holder must not exercise any of their defined functions unless they do so under the supervision of a person who is the licensee-in-charge.

Section 32 sets out the obligation of the licensee-in-charge to properly supervise a business. These obligations include a requirement to properly supervise employees and establish procedures to ensure that the PSBA and other laws are complied with. The section also provides for the Director-General to develop guidelines relating to non-compliance with this section.

Finally, section 41 clearly states that licensees are responsible for the actions of their employees and are liable for any act or omission by that employee.<sup>19</sup>

Consequently, it appears to the panel that the legal role of certificate holders and the obligations of the employer and licensee-in-charge are quite clear and unambiguous. However, the panel acknowledges that there is, in practice, enormous variation in the level of supervision.

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<sup>19</sup> **41 Liability of licensee for acts of employees**

A licensee who employs a person at any place of business of the licensee is responsible, in tort and in contract, for anything done or not done by the person:

- (a) within the scope of the employee’s authority, or
- (b) for the benefit, or the purported or intended benefit, of the licensee or the licensee’s business.

The panel understands that many real estate businesses adopt a 'sink or swim' approach to certificate holders and simply put them to work with little or no supervision or support. The view is that those people who are suited to the industry will survive while those who are not will move on. A new certificate holder can be employed at a relatively low cost.

There is also a view, and this was articulated during the face-to-face consultations, that some licensees are too busy selling real estate or managing property to supervise staff. Further, many businesses operate in a pressure environment where each person is seen to be a competitor. This means that there is often neither the time nor the inclination to supervise inexperienced staff.

The panel accepts that the unsupervised activities of certificate holders is a significant problem for the property services industry and that this should be the focus of careful consideration by government and industry. However, the panel is concerned that proposals to increase the minimum educational requirements to a Certificate IV and impose a mandatory period of experience for certificate of registration holders, effectively removes this category altogether. A change of this magnitude would create a significant barrier to entry in this market and has the potential to significantly alter the cost structure of this industry.

To make such a radical change would require a more thorough review of the licensing structure and the supervisory responsibilities of employers. This would necessitate more extensive consultation than has taken place or has been possible in the time allocated for this review. Further, the panel is not convinced that the changes proposed by industry associations have widespread industry support and feels that there should be further market testing.

### Minimum education standards for certificate holders

Nevertheless, the panel believes that the lack of supervision across all licensed occupations in the property industry does create an exposure for consumers and perpetuates an environment in which people are likely to develop poor practice. This lack of supervision contributes to a situation in which new entrants may not have adequate understanding of practices that are consistent with the PSBA or other laws and which are indeed prohibited by law. One way to counter this is to increase the current training requirements so that certificate holders have greater awareness of what is 'right and wrong' in the industry, notwithstanding that their employer should continue to supervise them.

The panel supports the notion that the current education requirements for certificate of registration holders in all licensed occupations should be increased to 7 units. However, it does not agree with the units proposed by industry and has made alternate recommendations which focus more on consumer risk than on industry skills. The panel suggests that there would be benefit in further consultation between industry and Fair Trading to refine the panel's recommendations and to ensure that relevant risks have been adequately addressed.

The strata community sector has been actively involved in the development of a new Certificate III in Strata Community Management, which will replace the existing Certificate III and is specifically tailored for the needs of the strata community. Although the new Certificate III is different than that proposed for other sectors in the property services industry, it is clear the needs of this sector are significantly different than other sectors and that the development of the new Certificate III qualification has been in response to the efforts of this sector. The panel also notes that the sector has a robust accreditation scheme and is focused on asset management rather than property sales and management.<sup>20</sup>

Although the panel supports using this qualification as the basis for entry-level requirements, it has been proposed that the entire qualification should comprise the minimum educational entry requirements for this sector. However, the panel is concerned that this may be too great a barrier to entry and supports a selection of key units. For this reason, there should be further consultation between Fair Trading and this sector, once the qualification is endorsed, to determine which units from this qualification should comprise the compulsory units for the certificate of registration.

Details of the new Certificate III qualification, which contains 11 compulsory units, are provided at Appendix 3.

The panel proposes that the educational requirements for certificate holders should be as set out in the table below.

	Real Estate salesperson	On-site residential property manager	Business Sales Person	Stock and Station Salesperson
CPPDSM4008A—Identify legal and ethical requirements of property sales to complete agency work,				
CPPDSM4007A—Identify legal and ethical requirements of property management to complete agency work.				
CPPDSM4079A—Work in the business broking sector,				
CPPDSM4080A—Work in the real estate industry,				
CPDSM4081A—Work in the stock and station agency sector				
CPPDSM4003 Appraise property				
CPPDSM4015B - Manage agency and consumer risk				
CPPDSMRE02 - Handle client funds as part of agency operations				
CPPDSM4017 Negotiate effectively in property transactions				

**Table 6 – Proposed entry requirements for licensed property occupations**

In addition the panel proposes that possession of a certificate of registration is a pre-requisite to eligibility for a license. The panel has recommended a period of practical experience before a person is eligible to apply for a licence. This also means that this

<sup>20</sup> Certificate III is the new qualification for strata community managers, which is awaiting endorsement by AISC. AISC meets next in Sydney on 21 and 22 March although it is not known whether this qualification will be endorsed at that meeting. If endorsed this qualification will replace CPP30311 – Certificate III in Property Services (Operations).

experience must be gained while a person is working as a certificate holder and will address current stakeholder concerns about people obtaining licenses without any experience. The proposed experience requirement is discussed further from page 32.

Further, as previously discussed, the key risks in this industry are adequately addressed by the core units in the Certificate IV. If certificate holders are now required to complete the core units, then the key risks for certificate holders are also addressed through mandatory training, notwithstanding problems with supervision in this industry.

The proposed units are identical to the core units in the Certificate IV Property Services Real Estate except for CPPDSM4009B – Interpret legislation to complete agency work. Issues around knowledge of applicable legislation are addressed in other core units and the panel suggests that this unit is best left for those seeking the licence qualification.

CPPDSM4003A - Appraise property - is an additional requirement for the property management and sales sector. This unit would serve to address a clearer appreciation of the requirements around underquoting. It would also provide additional knowledge and skills to agents at the entry level around what they should or should not do in relation to providing advice to clients on anticipated price expectations.

CPPDSMRE02 - Handle client funds, as part of agency operations - is a new unit and part of the revised training package. This unit is better targeted towards entry level than the more complex CPPDSM4006A - Establish and manage agency trust accounts. If CPPDSMRE02 is approved then this should be adopted for certificate holders. Otherwise, this unit could be put forward by the regulator as an 'approved course' for approval by ASQA and adopted for certification purposes by Fair Trading.

## Minimum education standards for licensees

An analysis of risk and the content of the Certificate IV units support the view that the current training is adequate for existing license holders who simply sell or manage property and do not operate a trust account or manage their own business. Consequently, the panel is of the view that the existing Certificate IV should remain as the key requirement for the granting of a property agent's licence. As discussed on pages 9 to 13 there are challenges with the existing training regime and changes that can and should be made. However, simply increasing the training requirements will not address these issues.

As previously discussed, the argument that the minimum educational requirement for a licensee should be a Diploma appears to be based largely on the idea that this will provide a better outcome. The AQF descriptions of Certificate IV and Diploma<sup>21</sup> suggest that the qualifications will be taught at different levels and produce students with a higher level of learning.

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<sup>21</sup> <http://www.aqf.edu.au/aqf/in-detail/aqf-levels/>

The CPPD50307 Diploma of Property Management (Agency Management) is similar to the CPPD40307 Certificate IV in Property Services (Real Estate). The core subjects are identical other than the inclusion of a Certificate IV unit in trusts accounts.<sup>22</sup>

The majority of subjects that comprise the Diploma in Property Services are identical to those required for the Certificate IV. The additional units are business management units and do not relate to risks that arise in the selling of real estate or the management of property.

<b>Cert IV (24 units)</b>	<b>Diploma (26 units)</b>
Core Units (5 core units)	Core Units (six core units)
	CPPDSM4006A Establish and manage agency trust accounts
CPPSSM4007A Identify legal and ethical requirements of property management to complete agency work	CPPSSM4007A Identify legal and ethical requirements of property management to complete agency work
CPPDSM4008A Identify legal and ethical requirements of property sales to complete agency work	CPPDSM4008A Identify legal and ethical requirements of property sales to complete agency work
CPPDSM4015B Minimise agency and consumer risk	CPPDSM4015B Minimise agency and consumer risk
CPPDSM4080A Work in the real estate industry	CPPDSM4080A Work in the real estate industry or CPPDSM4081A Work in the stock and station agency sector
CPPDSM4009B Interpret legislation to complete agency work	CPPDSM4009B Interpret legislation to complete agency work
Units (19 elective Units – at least 10 from property sales and management, with the remainder as follows: Property sales and management; Specialist; or common	Common Units (minimum of four and a maximum of ten common units)
	BSBFIM501A Manage budgets and financial plans
	BSBHRM402A Recruit select and induct staff
	BSBMGT515A Manage operational plans
	BSBMGT605B Provide leadership across the organisation
	CPPDSM4005A Establish and build client agency relationships
	CPPDSM5009A Coordinate risk management systems in the property industry
	CPPDSM5012A Develop a strategic business plan in the real estate industry
	CPPDSM5018A Ensure a safe workplace in the property industry
	CPPDSM5030A Manage projects in the property industry

<sup>22</sup> Completion of the unit CPPDSM4006A – Establish and manage agency trust accounts currently a licensing requirement.

	CPPSM5032A Market the agency
	CPPDSM5036A Prepare tender documentation in the property industry
Units (19 elective Units – at least 10 from property sales and management, with the remainder as follows: Property sales and management; Specialist; or common	Elective units (a minimum of 8 and a maximum of 16 units chosen from: <ul style="list-style-type: none"> <li>• The specialist or common units in the Cert IV in Property Services (Real Estate);</li> <li>• The Cert IV in Property (Stock and Station);</li> <li>• Any Diploma or Advanced Diploma qualification in the CPP07 Property Services Training Package;</li> <li>• Ant Diploma qualification in BSB07 Business Services, RTE03 Rural Production or FNS04 Financial Services Training Package, provided that the units do not duplicate units in the CPP07 Property Services Training Package</li> </ul>

**Table 7 - Comparison of Certificate IV and Diploma requirements**

As can be seen from the table above, the key differences between the Certificate IV and the Diploma are units that relate to managing staff, running a business and managing trust accounts. There is a good argument to include the Certificate IV unit, 'CPPDSM4006A Establish and manage agency trust accounts' as a compulsory unit for licensees and the Qualifications Order currently prescribes this unit as a mandatory requirement.

When examined as a whole, there is no doubt that the Diploma qualification provides a better educational outcome for an individual than the Certificate IV. However, the issue to be addressed is not which is the better qualification but what level of training is needed to address the relevant risk to the public.

As stated earlier on page 20, the panel is of the view that the existing Certificate IV level in the CPP07 Property Services Training Package, if properly delivered and assessed adequately, addresses the key risks that have been identified in the property services industry. For this reason, there is little argument to mandate as minimum education requirement business management skills for people only selling or managing property.

As the minimum entry requirements for certificate holders will comprise the core units of the Certificate IV qualification, the panel also recommends that possession of a certificate of registration for a minimum time period should be a pre-requisite for eligibility to apply for a licence. This creates a linkage between the certificate and licence categories and assists to establish a career pathway.<sup>23</sup>

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<sup>23</sup> There is also a career pathway from a Certificate IV to a Diploma by completing the additional units. However, a student may need to enrol separately as a Diploma student to complete these additional units.

## Minimum education standards for licensees-in-charge

Nevertheless, the panel is of the view that the situation is quite different for the licensee-in-charge. One of the key risks is the obligation to manage a trust account<sup>24</sup> and it is clearly important that there is specific training in respect to these obligations. The other key risk that arises for the licensee-in-charge is the risk of business failure and the panel is of the view that there is a direct connection between business failure and the risk of trust account defalcation.

One of the issues explored by the panel was whether business failure was a risk that should be managed through licensing as people enter business every day without needing to have mandatory training. However, the panel is of the view that the risks for the property industry are different because of the responsibility for trust account management and consequently, business skills are a risk that should be managed through mandatory licensing.

Although there is clearly a different role and educational requirement for the licensee-in-charge there is currently no separate licence category. There is also a variety of employment arrangements in place within the New South Wales property sector and identifying a discrete category where business skills are required presents a challenge for the regulator.

Resolving this problem is beyond the capacity and the brief of this panel and is essentially a challenge for Fair Trading to explore. It has been suggested that in the absence of a separate category for licensee-in-charge, the minimum educational standard for all licences should default to a Diploma level. However, it should be possible to define and clarify the role of licensee-in-charge as a separate licence category. In this event, the panel reiterates that an ordinary licensee should be required to hold a Certificate IV and the licensee-in-charge a Diploma.

## Recommendations

- 3.1 That the minimum educational standards for certificate holders be increased to 7 units of competency from the Certificate IV qualification
- 3.2 That further discussion takes place to ensure that the proposed Certificate III qualification is sufficient for strata managers
- 3.3 That Certificate IV continue to be the mandatory minimum education requirement for all categories of licensee
- 3.4 That a current certificate of registration be a pre-requisite for a licence

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<sup>24</sup> A trust account unit is of the core units for the Diploma qualification but this unit is a Certificate IV unit and already prescribed as a mandatory unit for a real estate licence.

- |     |   |
|-----|---|
| 3.5 | That a new licence category be established for licensee-in-charge   |
| 3.6 | That the minimum educational standards for licensee-in-charge is a Diploma or Certificate IV and an equivalent qualification in business management |

## 7. Experience

### Stakeholder submissions

Most respondents argued that there is a need for people entering the industry to have experience. Many people stated that the quality of the industry generally has deteriorated since the removal of the two-year experience requirement in 2003. As a result, there was a view that the two-year experience period be restored.

A number of respondents who support the Certificate IV for certificate holders also propose that certificate holders must have 2 years of experience before converting from a provisional to a full certificate. Respondents also generally propose that there should be a 2 year qualification period for licensees and for licensees-in-charge.

Generally, there is a view that people would learn practical skills on the job and that this would reinforce the theoretical skills gained in the classroom. One respondent said that experience, "...enables the student to appreciate application of the theoretical data provided in the classroom, in the field of practice. If this is absent in the overall learning experience then the classroom learning can become an unrelated experience to its designed practical application".

One respondent said that, "The risks surrounding a non-experienced agent would be reduced if a time-based component were to be reintroduced." They went on to say that a time-based experience allows people to learn through repetition of tasks that allow them to become proficient. "The current entry level course is well suited to covering the legal and regulatory requirements of working in the sector, but the more people based components could be honed as a probationary agent on the job".

Although respondents supported more experience on the job, there was little rationale for the 2 year period other than it had existed previously and should be reinstated.

ASQA also suggests that the panel consider incorporating a work placement or mandatory practical requirement in the qualification. This might also be achieved through a provisional licensing arrangement.

### Panel's conclusions

A number of stakeholders proposed that licensees should complete a mandatory period of experience before gaining a licence. However, whenever the panel sought to understand what people would achieve during this period there was little clarity as to what this experience might look like or what people would actually do during this period of experience or how the acquisition of skill might be measured. However, there was a general view that people would learn practical skills on the job and that this would reinforce the theoretical skills gained in off the job learning environments. It was argued that experience connects theory with practical application.



In an ideal environment, the panel could envisage a mentoring role for the licensee-in-charge or other senior people within a business where students could be nurtured and encouraged to experience and refine theoretical skills gained during training. However, the panel has heard consistently that this is not the nature of the environment in which people operate and this lack of supervision has been used as a key argument to increase the training and independence of certificate holders. Further, the panel understands that in many cases, certificate holders who wish to undertake further training are often viewed as future competitors rather than people to supervise and mentor.

The panel supports the principle of demonstrating competence through experience and that process should be a part of obtaining a licence. Indeed, the panel is of a view that the absence of a practical process of demonstrating skills in the workplace is a key and significant gap in the current training regime. However, the panel has concerns about a solely time-based period without a clear understanding as to what must be achieved during this period of time. It is also of a view that an experience requirement should take into account differences in the learning abilities of individuals and variations in the learning environment.

Units within the current training framework describe the skills or competencies required for work in the industry. The demonstration of these skills is often done in a simulated environment. The panel is of the view that some competencies should be demonstrated in the field and that evidence of attainment (EOA) of a particular competency should be a part of a specific period of experience.

In an environment where training and mentoring is valued, it would be a logical step to nominate the licensee-in-charge to be a mentor and to verify the EOA for a person who is progressing through the requisite units that are required to complete the Certificate IV. Indeed, where the licensee-in-charge is prepared to take on a mentoring role, this is an appropriate model.

However, the panel understands that a number of people, who undertake training to complete qualifications to be eligible to obtain a licence, wish to complete these requirements discretely. For this reason, there needs to be some facility for people to undertake practical experience without the approval or supervision of the licensee-in-charge. For this reason, the panel proposes that there be two avenues by which people can provide evidence of attainment.

The first approach, as previously described, is for the relevant attainment to be certified by a licensee. The person who certifies the evidence could be a licenced person in their place of employment or in another place of employment. However, where there is a perceived need for discretion, an applicant could make a declaration that they have undertaken the experiences that demonstrate the attainment of specific competencies and provide this declaration as evidence of attainment. It might also be possible to obtain the involvement and endorsement of an RTO in developing the EOA documentation. In either case the student should maintain a logbook, which details the dates and circumstances in which evidence is attained.

The evidence of attainment must be obtained during a period of not less than 6 months of full time equivalent employment as a certificate holder. It is unlikely that many people will achieve the evidence of attainment in 6 months but this facility does recognise differences in individual capacity and of workplace environments.

The training package is designed so that students demonstrate competency in the areas specified in each unit. The experience requirement does not replace but supports and strengthens these competencies.

The development of an assessment framework for evidence of competence will take some additional work beyond what can be achieved by this panel and will require some discussion between Fair Trading, industry and RTOs. This is particularly important to determine how evidence is ultimately gathered.

It would be easier but less rigorous to simply prescribe a time-based experience period. However, not only does this approach not reflect individual learning paces and environments, it will also deliver a less satisfactory outcome. In an environment where supervision and a commitment to training is poor, a fixed time period runs the risk of simply perpetuating poor practice with no guaranteed outcome. The panel's proposal gives some substance to the experience and will help to improve what is actually achieved during the period of experience.

The panel proposes that a list of key competencies is selected from units within the Certificate IV. The assessment process should require applicants to gather evidence that these competencies have been demonstrated in a practical workplace setting.

An example of the type of competencies for which evidence of attainment could be gathered is as follows. This is not intended to be an exhaustive list but is a demonstration of a possible approach to an evidence process.<sup>25</sup>

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<sup>25</sup> Prior to 2003, the licensee-in-charge was required to complete a checklist, which verified the experience gained during the 2-year experience period. While this was a useful list of activities it does not relate to specific competencies achieved during training and contained within the Training Package. The form of assessment was subjective but also meant that the licensee-in-charge was potentially an industry gatekeeper rather than a mentor. A contemporary checklist should reference specific competencies and their relevant units. The development of this checklist requires further work and its completion is beyond the timeframe for completion of this report.

## Evidence of attainment of competency

Unit	Evidence of Competency	Evidence of attainment
CPPDSM4007A – Identify legal and ethical requirements of property management to complete agency work	Complete statutory and agency residential tenancy documents including authority, leasing and termination documents	Record of activity – date of agreement, and role.  Endorsement by supervisor or licensed person/RTO – diary/logbook
CPPDSM4009A – Identify legal and ethical requirements of property sales to complete agency work	Application and knowledge of the sale process, including ways of obtaining listings, methods of selling property, strategies for marketing property, and the process for settling the sale of property	Record of activity – description of role and details of relevant listings and sales  Endorsement by supervisor or licensed person/RTO – diary/logbook
CPPDSM4009B – interpret legislation to complete agency work	Identifying changes to legislation and industry codes of conduct affecting agency operations (e.g. identify changes to the PSBA and Regulations in the last 2 years)	Demonstrated activity  Endorsement by supervisor or licensed person/RTO – diary/logbook
CPPDSM4003A Appraise property	Appraising the sale price range or rental value of property for listing purposes	Demonstrated activity  Endorsement by supervisor or licensed person/RTO – diary/logbook
CPPDSM4010A Lease property	Completing tenancy agreement or lease documentation and conducting inspections for prospective tenants	Demonstrated activity  Endorsement by supervisor or licensed person/RTO – diary/logbook
CPPDSM4012A List property for sale	Completing standard and statutory documentation associated with listing properties for sale; finalising and negotiating the listing of properties with clients; maintaining business records associated with the listing of properties for sale	Demonstrated activity – date location and relevant details  Endorsement by supervisor or licensed person/RTO – diary/logbook
CPPDSM4014A Market property for sale	Implementing marketing activities for the sale of property; planning and developing marketing plans for the sale of property; and preparing marketing materials for the sale of property	Demonstrated activity – date location and relevant details  Endorsement by supervisor or licensed person/RTO – diary/logbook
CPPDSM4020A Present at tribunals	Acting as a witness at a tribunal; knowledge of the role and jurisdiction of tribunals and courts that hear matters relating to real estate operations; participating in conciliation processes for grievances and disputes; preparing a case for a tribunal; preparing and lodging applications for a tribunal; presenting a case at a tribunal.	Demonstrated activity  Endorsement by supervisor or licensed person/RTO – diary/logbook
CPPDSM4046A Manage tenancy disputes	Adapting interpersonal style and techniques to varying social and cultural environments in order to manage and resolve tenancy disputes	Demonstrated activity  Endorsement by supervisor or licensed person/RTO – diary/logbook
CPPDSM4052A - List and market rural property for sale or lease	Completing standard and statutory documentation associated with listing and marketing rural properties for sale or lease and identifying client requirements with regard to listing and marketing rural properties for sale or lease	Demonstrated activity  Endorsement by supervisor or licensed person/RTO – diary/logbook

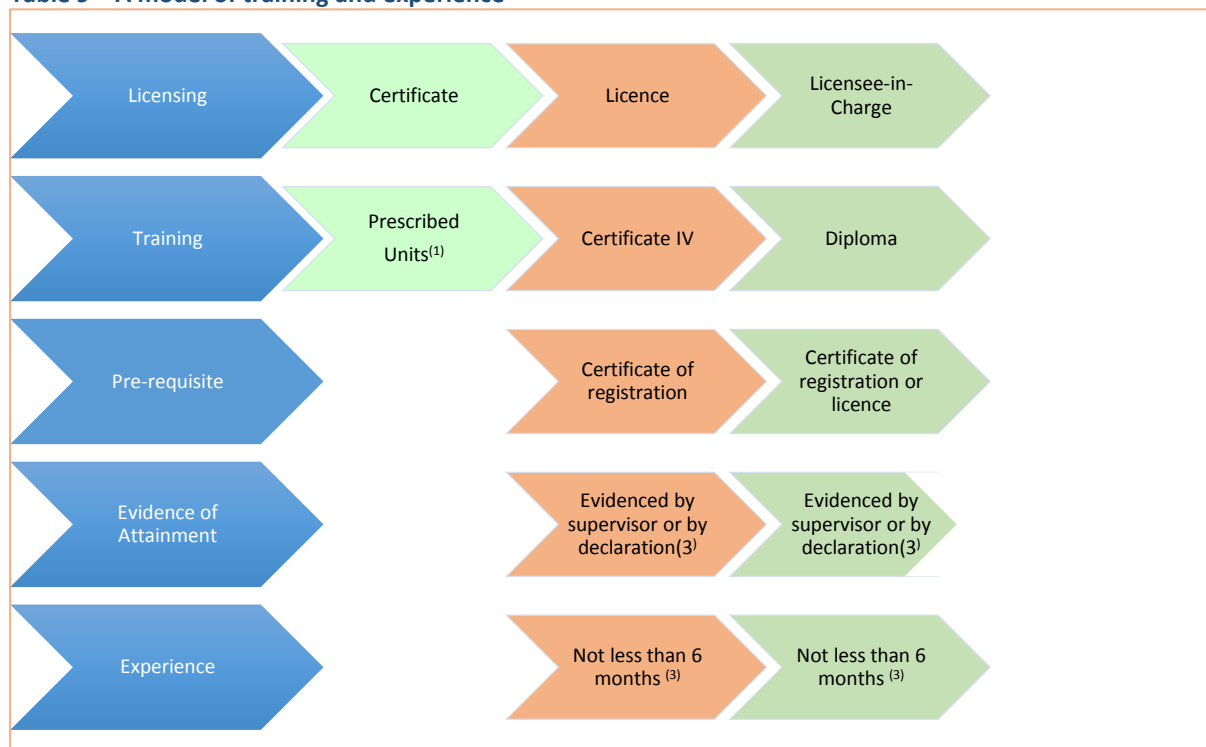
<b>CPPDSM4044A Coordinate maintenance and repair of properties and facilities (strata)</b>	Inspecting completed work against work order and ensuring remedial action for faults, errors or omissions; monitoring maintenance and repair work ensuring effective communication exchange and identification of factors requiring variations to work schedules; planning maintenance and repair work; ensuring client and tenant safety and security, and resource requirements are according to budgetary parameters responding appropriately to requests for maintenance and repair work and maintaining adequate records and reports.	Demonstrated activity  Endorsement by supervisor or licensed person/RTO – diary/logbook
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**Table 8 - Evidence of attainment of competency**

## A model of the proposed training requirements

The table below is a grid model of the relationship between training and experience and evidence of attainment for each license category.

**Table 9 – A model of training and experience**



1. The prescribed units are detailed in Table 6.
2. Evidence of attainment can be verified either by a supervisor, a licensee, an RTO or by self-declaration. Verification includes details of where the activity took place, the date and other pertinent details.
3. Before being eligible to apply for a licence, the applicants must have been employed in a real estate business as a certificate holder for a period, not less than 6 months on a full time equivalent basis.

## Recommendations

- 4.1 That there be a period of mandatory experience following the completion of the educational requirements for a licence
- 4.2 That prospective licensees be required to gain evidence of the attainment of competencies during this period of experience
- 4.3 That the EOA be completed in not less than a 6 months period of full time equivalent employment as a certificate holder
- 4.4 That Fair Trading, Industry and RTOs jointly develop the EOA documentation for the experience requirement

## 8. Continuing Professional Development

### Stakeholder submissions

The majority of stakeholders who responded to the Review supported continuing professional development (CPD) as a valuable tool for the dissemination of knowledge and the maintenance of skills.

Virtually all respondents agreed to a need for significant improvements to the current CPD arrangements.

For example, one respondent stated that, “There is no doubt that CPD properly structured with informed content and delivered by qualified and experienced trainers is of great benefit to practitioners.” However, “...in recent years CPD content has often been a repetition of legislation and previously circulated industry updates already familiar to those attending and delivered by presenters who have no idea and lack industry experience.”

Another respondent said that many people “...fail to obtain further education past their qualification of a Certificate of Registration. CPD provides the industry with the opportunity to increase the education and professionalism of those employed in the industry for the benefit and protection of the consumer.” It was also noted by another respondent that CPD assists with keeping knowledge up to date and helps people to understand the risks associated with their obligations.

It was proposed that, “The right CPD provides knowledge and skills that many practitioners would never be exposed to in their place of employment. With the right content it also educates the principal how to properly supervise and manage compliance.” It was further stated that the main problem with CPD was content and delivery and there needed to be greater involvement by the regulator in approving the content and delivery of CPD.

A number of respondents said that many practitioners opted for a tick and flick approach to CPD and it was suggested that, “...there are litany of quick and cheap providers of CPD.” It was also stated that, “Some of these providers will for a fee simply issue the necessary document to

evidence the training without the student attending any tuition whatsoever. It was suggested by one respondent that the current CPD regime is, "...very murky indeed."

Generally, respondents proposed that there should be improvement to the Commissioner's guidelines. It was suggested that one of the key reasons for poor CPD delivery is that there is no need for the provider to meet any recognised standard. The Western Australian model was proposed where all CPD must be submitted to the regulator for approval.

In relation to costs to business, it was pointed out that CPD was generally undertaken at the cost of the employee and that the only impact on business was the time absent from work.

A key theme through the consultation process was the absence of a requirement to provide evidence of completion of CPD. It was proposed that evidence be attached to certificate or licence renewal. Again, the Western Australian system was mentioned where RTOs are required to upload details of CPD training to the regulators system.

Finally, ALPA, the peak body representing the Stock and Station Agency sector called into question the value of CPD for certain classes of licensed occupations, particularly those engaged in the sale of livestock. Much of the CPD available for this sector is offered to comply with OFT regulatory requirements and imposed an unreasonable burden on an already heavily regulated industry sector. Generally, there are adequate existing means by which stock and station agents can keep abreast of changing legislative and public health issues. Consequently, it is proposed that CPD should be made mandatory for the licensee-in-charge but that it should be voluntary for certificate and licence holders in the stock and station agency sector.

## **Panel's conclusions**

Most respondents support the concept of CPD and feel that it is useful but criticised a number of aspects of current delivery. The panel is of the view that the current guidelines are adequate but that the delivery of CPD must be improved.

The panel's view is that CPD should be based upon a more coherent conceptual approach. An examination of other CPD programs suggests that a sound program has three elements – skills development, information dissemination and professional development. In general, CPD should be directed towards achieving these three requirements.

There is provision under the current arrangements for compulsory CPD. However, this provision should be limited to circumstances where there is new information to disseminate and it is important that certificate and licence holders are aware of this information. This might mean that compulsory CPD is not required in those years where there is no need to disseminate information, and this requirement should be used sparingly. As previously mentioned, compulsory CPD is also useful to provide information about matters such as work, health and safety and anti-discrimination requirements.

Much of CPD should be directed towards skills maintenance and development and there is no shortage of appropriate subjects. The panel also considers that the completion of units within the national training package should attract CPD points and is advised that this is already the case. In this event, few certificate or licence holders appear to be aware of this provision and the panel recommends that this opportunity be more widely publicised.

The category of CPD for professional development could be a key focus for industry associations to deliver training and information on professional issues. Industry associations could develop their own courses and these could be a requirement of continuing membership. CPD points for professional development would comprise not more than about 30 per cent of total achievable CPD points.

One of the criticisms of the current CPD program is that the type of training lacks relevance and is not delivered appropriately. A number of respondents have relayed incidents where people turn up for a couple of hours and obtain their full years points with little effort. A sound CPD program should have greater rigour than at present and a number of people have recommended the Western Australian model where each CPD program is approved.

One respondent proposed that the current Property Industry Reference Group might perform this function but the panel is of the view that this function should have greater independence. The panel supports the proposal to have a separate approval for each program but suggests that a separate, expert training panel be set up to perform this function.

The panel also recommends that the approval should be required for all CPD. This means that there should be no exemptions for CPD provided by industry associations. The CPD panel would approve training on the basis of relevance, the type of delivery, the time taken for delivery and the method of assessment.

One of the issues raised during regional visits was the lack of relevance of most CPD to stock agents. It was also argued that there was a significant participation cost and inconvenience to these agents. The panel recommends that there be no CPD requirements for people who only sell livestock and not land.

Finally, a frequent complaint during the face-to-face consultations was the absence of a requirement to provide evidence of completed CPD to Fair Trading. At present, a certificate or licence holder is only required to keep this documentation in the real estate office for audit purposes. This appeared to many people to reinforce a view that Fair Trading does not value CPD.

For this reason, the panel recommends that evidence of completion of CPD be provided to Fair Trading. Clearly, providing volumes of paper will create an administrative challenge and it is proposed that Fair Trading explore the feasibility of having RTOs forward the relevant information electronically.

## Recommendations

- 5.1 That the existing guidelines be revised to incorporate 3 classes of CPD – information, skills development and professional development
- 5.2 That compulsory CPD be used as a key vehicle for delivering information or providing key training such as work, health and safety or anti-discrimination training
- 5.3 That a CPD training panel approve all CPD, except professional development CPD
- 5.4 That stock only agents be exempted from CPD
- 5.5 That Fair Trading investigates a means by which evidence of completion of CPD can be provided directly to Fair Trading by the relevant RTO.

## 9. Mutual recognition

### Stakeholder submissions

As detailed in the Consultation Paper, the stock and station sector have raised issues relating to mutual recognition of agents. It is proposed that licensed/accredited auctioneers should be able cross borders and conduct auctions. ALPA has raised this issue and their submission details the reasons for this proposal. Generally, it is argued that with drought and other emergencies there would be benefit in greater flexibility for auctioneers. From a practical perspective, “It is our firm belief that agents should be able to conduct auctions in other states without going through the costly red tape and time consuming act of receiving mutual recognition.”

There was support for the ALPA proposal from other respondents. However, people saw merit in the proposal only if the arrangement was limited to the sale of livestock. Most respondents expressed concern that “...any further deregulation should not extend to rural land.”

### Panel’s conclusions

The panel notes the comments made by stakeholders and their support for an improved mutual recognition arrangement for the cross border activities of livestock auctioneers. However, it also notes that this issue does not relate to any training issue. Further, the resolution of this matter is not solely within the ability of the New South Wales Government and will require further inter-jurisdictional discussion.

## Recommendations

- 6.1 The panel notes the support by stakeholders for an improved mutual recognition arrangement for the cross border activities of livestock auctioneers.



## 10. Other issues

### Implementation

It was pointed out during the face-to-face consultations that if new education standards were applied to new entrants it would take some time before any significant change filtered through the industry. Indeed it was suggested that it would be 15 years before there was any appreciable change. It is difficult to apply educational standards retrospectively but the panel is concerned that some improvement should be made to the knowledge of people already in the industry. One of the ways of achieving this would be targeted or even compulsory CPD. This would assist in bringing current certificate and licence holders up to a contemporary standard.

However, one of the challenges will be to target further training to those in need while not imposing additional requirements on those who have contemporary skills and have little need for improved knowledge and skill.

### Police checks

The panel suggests that one of the key points of tension between Fair Trading and the industry is the process for approving initial applicants for certificates and licences. The panel understands that a considerable amount of time is taken waiting for Police clearances. The panel suggests that applicants be required to obtain their own National Police Certificates and that the approval process be significantly streamlined.

### Simplifying the licence structure

The panel observes that the licensing structure in NSW is complex and suggests that simplifying this structure would be of considerable benefit.

Notwithstanding the demise of the National Occupational Licensing Structure (NOLS), there is still value in trying to harmonise provisions nationally where possible and removing licensing complexity might assist this process.

The panel recommends that the business broking, buyers agent and station licenses be absorbed into the Real Estate licence as is the case in Victoria. It also recommends that the stock licence be further deregulated or moved to a primary industry regime.

This would leave a real estate agents licence and a strata or community manager licence, although the panel has proposed the addition of a new category for licensee-in-charge.

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### Appendix 1 - Terms of Reference

The reviewer is requested to provide review and advice on initial and ongoing training standards for the licensed property industry under the Property Stock and Business Agents Act 2002. The arrangements that the reviewer recommends should be market-tested, efficient, effective, competitive, contestable and take account of relevant externalities. The approach should encourage quality property services as well as a competitive and efficient market.

#### **Matters for Consideration**

The review should provide advice and recommendations on:

- Entry level standards for the licensed property services industry
- Ongoing training requirements for the licensed property services industry
- How and by whom initial and ongoing training should be provided
- How and by whom initial and ongoing competency should be assessed
- Mutual recognition for the auctioning of property and livestock

Any recommendation to vary the status quo must include an analysis of the likely costs and benefits of doing so.

The review is to take into account:

- Current initial and ongoing training requirements for property services licensees in NSW and across Australia
- Patterns of conduct of property services licensees in NSW and across Australia and the impact of training standards on standards of conduct
- Direct and indirect costs (including opportunity costs) of initial and ongoing training
- Barriers to entry into the property services industry compared to similar occupations
- The available training and qualifications available for the property services industry
- The existing providers of training for the property services industry, including quality and costs
- Potential methods of assessing the skills and knowledge of licence applicants (whether in addition to or in lieu of formal qualifications)
- The potential utility of a minimum experience requirement for licence applicants.

#### **Consultation and Timing**

In conducting its review the reviewer is to consult with relevant stakeholders in metropolitan and regional locations. This should include a written consultation paper as well as a small number of face to face meetings. The reviewer is to prepare a report detailing the advice and recommendations. The reviewer is to present a draft report to the Commissioner by 31 December 2015 and its final report by 28 February 2016.

### Appendix 2 - List of Respondents

1. Brett Bates, Teacher, Building Studies, TAFE NSW
2. George Rousos, Training Consultant, Industry Training Consultants
  - a. George Rousos, additional submission.
  - b. George Rousos, additional comments
3. Kymn Collins, Sales Manager, Forresters Beach & Glengara Retirement Villages
4. Lester Phelps, Licence Real Estate Agent # 1400733 – Exp 31/8/15
5. Ewan Morton, Managing Director, Morton Real Estate
6. Barbara Newman
7. Chris Wilson, Resource Developer, and Brian Cannan, Brian Cannon Auctions Pty Limited t/as Think Real Estate
8. Veronica Morgan, Principal/Licensed Real Estate Agent, Good Deeds Property Buyers
9. Andy Madigan, Chief Executive Officer, Australian Livestock & Property Agents Association Ltd, (ALPA)
10. Max Wilson, Executive Director & Sasha Boe, Deputy Chair, Arts, Communications, Finance Industries and Property Services Ltd, ACFIPS.
11. Carl Hedman, Licensed Real Estate Agent #20034925 – Exp 14/05/16
12. David Crombie, Chief Executive Officer, Estate Agents Co-operative Ltd
13. Adrian Axisa, Combined Property and Strata
14. Tim McKibbin, Chief Executive Officer, REI NSW
15. Karen Stiles, Executive Officer, OCN
16. Nick Roberts, CEO, RiSQ Group
17. Rich Harvey, President, REBBA
18. Greg Haywood, President SCA
19. Jamie Hammond, CEO, RealeTraining
20. Bob Berry, REI NSW (Orana Division ).
21. John Gilmovich, Property Owners Association of NSW
22. Julie McLean, Ace Body Corporate Consulting
23. Gabrielle Lea, The Law Society of NSW
24. Peta Swarbrick
25. Christopher Robinson, Chief Commissioner and Chief Executive Officer, Australian Skills Quality Authority (ASQA)

### Appendix 3 - Certificate III in Strata Community Management

<b>Packaging rules</b>	
To achieve this qualification, the candidate must demonstrate competency in:	
<ul style="list-style-type: none"> <li>• 11 units of competency comprising               <ul style="list-style-type: none"> <li>• 9 core units</li> <li>• 2 elective units.</li> </ul> </li> </ul>	
The elective units are chosen as follows:	
<ul style="list-style-type: none"> <li>• 2 units from the elective units listed below</li> <li>• 1 of the units may be chosen from the Certificate IV in Strata Community Management, other Certificate III qualifications in the Property Services Training Package, another current Training Package or state accredited course, provided the integrity of the AQF alignment is ensured, and they contribute to a valid, industry-supported vocational outcome.</li> </ul>	
<b>Core units</b>	
BSBFIA301A	Maintain financial records
CPPCMN4008A	Read and extract information from plans, drawings and specifications for residential buildings <b>Note:</b> Must address strata / subdivision plans, lot and common property survey plan
CPPDSM3006B	Collect and process information relevant to strata community management
CPPDSM3009A	Maintain workplace safety in the property industry
CPPDSM3011B	Monitor building facilities
CPPDSM3016A	Work in the property industry <b>Note:</b> leave this unit as is but redefine CPPDSM3017A Work in the strata/community management sector
CPPDSM3017A	Work in the strata/community management sector <b>Note:</b> Must include by laws of body corporates
CPPDSM3019B	Communicate with clients as part of agency operations
CPPDSM4045A	Facilitate meetings in the property industry
<b>Elective units</b>	
BSBFLM303C	Contribute to effective workplace relationships
BSBSUS201A	Participate in environmentally sustainable work practices
CPPDSM3007B	Identify risks and opportunities in the property industry
CPPDSM3010B	Meet customer needs and expectations in the property industry

### Appendix 4 - Face to face consultations with stakeholders

People invariably began their discussion with the panel by saying that training standards are too low and that it is too easy to enter the industry. The panel understands that this means different things to different people. For some, the issue is about the need for more training before people start in the industry. For others, it is about the need to improve the quality of training delivery, while for others it is that people enter the industry without experience.

A number of people said that it is too easy to get recognition of prior learning. Some people want everyone working in an office to have training, including office assistants. However, some people want new starters to have all the requisite experience on the first day and feel that this is the responsibility of government through training.

A common complaint was about the difficulty in attracting the right people to enter the industry. Some feel that this is government's responsibility to solve this problem while others detailed a range of tools that are used, including psychometric and aptitude testing. The panel explored, during discussion, the attributes that make for good certificate holders and licensees. The key skill appears to be the ability to gain people's trust and a capacity for hard work. People said that there is a public perception that selling real estate is a glamorous industry where people drive expensive cars, wear nice clothes and make lots of money. The reality is often far different and people feel that a better understanding of what was involved in selling real estate would help to encourage the right people to enter the industry.

Most stakeholders said that the quality of training is unsatisfactory and are concerned that people are able to complete courses within an unreasonably short period of time. They believe that the level of knowledge acquired by students who participated in these courses is inadequate. It was often unclear whether people were concerned about the teaching of units in the national training package or about the Continuing Professional Development (CPD).

There appears to be more concern about the quality of CPD than with training generally. However, the panel did meet one person who had completed 24 units of competency towards a Cert IV within a period of less than two weeks. People also said that it is possible to gain a licence in four days when they meant a certificate.

The panel also explored whether the key training issue is about the unit content or about the delivery. Most people said that the issue is about the quality of delivery and the quality of trainers. It was suggested that many trainers lacked practical experience in the industry but one respondent suggested that many people take up training before retiring, which often means that their knowledge is out of date and that they teach inappropriate practices.

The panel was keen to understand how poor quality training and low skills and knowledge in the industry, translate into detrimental impacts on consumers. Many people had difficulty in identifying specific consumer detriments, however, some people said that poor education resulted in poor selling and appraisal skills, which meant that a vendor did not always get the best price for their property. Others said that an inability to understand planning and zoning documents could potentially mislead consumers.

A common complaint was that people entering the industry do not know or understand the law. However, a number of people said that agents who had been in the industry for some time also had a poor knowledge of the law. People also frequently said that mismanagement or fraudulent use of trust funds is a significant problem in the industry.

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A number of people suggested that exams should be reintroduced as a means of re-establishing improved quality. Many people spoke about their courses studied through TAFE where they had to attend for a few hours each week over a 12 month or two year period, and the fact that there was an examination at the end of each subject.

There was general dissatisfaction with online assessment and a number of people suggested that those completing assessments were not the people doing the courses. However, most acknowledged the value of online delivery in rural NSW and appreciated that this is often the only practical way to deliver training in rural communities. Concerns about online assessment was primarily directed towards the delivery of CPD although many feel that face-to-face tuition is preferable and of a higher standard.

Notwithstanding concerns about training standards, it was suggested that much of the criticism about training is based on hearsay evidence rather than fact and that the issue served a political rather than an educational agenda. While improvements can and should be made, they said that good work is being done in real estate training and it was important to acknowledge this and the fact that most trainers are doing a good job.

There were proposals from a number of individuals and organisations that the level of training for certificate holders should be increased from the current four to seven units from within the National Training Package. Few people support the status quo and even if respondents do not have a clear proposal, feel that entry standard training should be increased and improved. One specific proposal was that certificate holders should complete the existing requirements but should also complete the following units:

- CPPDSM4009B – Interpret legislation to complete agency work;
- CPPDSM4015B – Manage agency and consumer risk; and
- CPPSMRE02 – Handle client funds as part of agency operations.

Some people feel that all of these units should be gained before a person enters the industry. Others proposed that people gain four units first and the following three units during a period of practical experience. Alternately, people could choose to follow either path. It was proposed that this flexibility would not increase the actual barrier to initial entry but would nevertheless increase the overall standard of education.

There was also a proposal to stream training into either property management or sales. The panel was told that many people stay in property management and are not interested in sales or vice versa. It was proposed that an opportunity to stream into one or another would result in better training and better job satisfaction. However, other people pointed out that streaming is problematic because it takes some time for people to work out what they are good at and where their interests lay. For this reason, early streaming would limit rather enhance people's career opportunities.

One of the other issues raised in discussion was the view that training emphasised sales whereas the most difficult and complex aspects of managing real estate is in property management. It was suggested by a number of respondents that this complexity is often overlooked and undervalued and that there should be more training on residential tenancy matters.

A number of people feel that the way in which the Fair Trading specifies the units within the Certificate III and Certificate IV restricts choice. The training package is designed around a core set of compulsory units and people should be able to choose their own electives depending on where their

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interests lay. Some units are rarely chosen because of the way that Fair Trading specify the unit requirements for each licence category.

It was also suggested that a linkage between the current Certificate III and the Certificate IV could create an opportunity for a career path. This could be achieved in a number of ways but one option is to draw the compulsory units for certificate holders from within the Certificate IV package. This would allow a person to simply add units at a later time to complete the Certificate IV. Another suggestion was that applicants for licenses should be required to hold a certificate before they become eligible for a licence.

The Strata Community Australia suggested that the qualification known as A100 provided a better outcome than the current Certificate III and proposes combining these courses into one for strata managers.

People think that the Certificate IV is adequate as a level of training for licence holders although some people propose that the licensing standard should be a Diploma.

REINSW suggests removing the certificate holder registration and having only licensed agents. During the consultation process a number of people suggested that there is frequently little difference between certificate holders and licensees and in practice many certificate holders performed the full range of licensed activities, often with little or no supervision.

Some people pointed out that if new education standards were applied to new entrants it would take some time before any significant change filtered through the industry. One respondent suggested that it would be 15 years before there was any appreciable change. Although people did not suggest a retrospective application of higher standards, there was some thought that better delivered or better targeted CPD might be used as tool to bring current certificate and licence holders up to a contemporary standard.

A common complaint was the lack of experience possessed by people entering the industry. It was initially unclear as to whether people were referring to certificate holders or licensees, or both. There was particular concern about commission only agents entering the industry without any experience at all.

There are clearly different views about what is meant by competence and its relationship to practical experience. Some people expected a person to have completed four Certificate III units to be competent on completion of this training. However, many people believed that competence could only be demonstrated by serving a specific period of time in a work environment. Most people suggested that two years of experience was required before gaining a licence while others said that 12 months of experience was sufficient.

The panel explored what people meant by experience and most people seem to think that it is the requisite amount of time needed to become familiar with or comfortable in this industry. Others suggested checklists or logbooks and talked about supervision. Generally, responses were based on what used to be a requirement for two years experience without a clear understanding of what this added in a practical sense. However, one respondent stated, "The value of experience depends upon the experience".

One person said that it takes about three months for a certificate holder to work out whether they will stay in the industry and that it takes about nine months for people to really find their feet. They



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also said that the industry works on a three-year cycle and that a person may only see a rise or fall within the market over a 12-month period. While not suggesting that three years of registration was required, they pointed to the fact that people could easily get the wrong impression of the industry depending upon where in the cycle, they entered the market.

The panel explored the role of the business in orientating new entrants to the industry and some agreed that there is a clear responsibility for internal training and detailed their orientation and training programs. However, others felt that they are too busy selling or managing property and expect new entrants to have gained all of the requisite skills before they start. The panel felt that many businesses believe that it is the role of government to equip people with the knowledge and skill to enter the industry.

A number of people lamented the good old days before the new Act (2003) and talked about when they attended TAFE for 12 months of two years and undertook study while working in the industry. A number of people support the concept of a traineeship, although people meant different things by this term. There are formal traineeships available under government programs but these are seldom used to engage staff. When people spoke about traineeships, they usually meant an experience or orientation period rather than a formal traineeship. An orientation period would involve some combination of ongoing training, practical experience and on the job supervision or mentoring.

Most people felt that the licensee-in-charge (LIC) has a special supervisory and mentoring role and should hold a Diploma. The LIC is expected to supervise staff and perform many of the key roles in running a business. As the main difference between the Certificate IV and the Diploma is a small number of additional management units, the Diploma seems to be a useful way of improving the skills of people performing this role. It was also suggested that there could be a specific CPD unit in 'supervision' that could be applied to the LIC. However, it was also noted that there was no separate licence category for LIC.

The panel discussed the day-to-day activities of licensees and certificate holders and asked people about the nature of supervisory and mentoring roles. Businesses responses were mixed and while some supported a clearer formalisation of this role, others felt that it was appropriate for a large business but impractical for smaller businesses where people were too busy trying to make money.

The panel gained the impression that the level of supervision in the industry was varied and was in some cases completely non-existent. A number of respondents said that senior people in the industry frequently supported bad or outdated practice and were not the best people to be supervisors or mentors.

Almost everybody was critical of Continuing Professional Development (CPD). Many people expressed concern about the quality of delivery, the relevance of the topics, the quality of the trainers and the value of CPD generally. However, most people felt that CPD was important and a valuable tool if delivered properly. The strongest criticism came from stock agents who could not see the value of some of the generic CPD. There was a common complaint in rural NSW that the range of topics and the availability of courses is unsatisfactory.

The REINSW stated that it previously proposed to government an arrangement where the REI would provide all CPD on a not for profit basis and guarantee face to face CPD to all areas in NSW.

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Many people were critical about the ability to complete CPD online and it was often reported that one person in an office would do CPD assessment for everyone else. Nevertheless, most people understood that online delivery was an invaluable tool for the delivery of CPD in rural NSW.

There was also a clear view that the certificate of attainment should be sent to Fair Trading and not simply kept in the real estate business office in case of an audit. Agents felt that the absence of a requirement to lodge their certificate of attainment reinforced a view that Fair Trading did not think that CPD was important. It was pointed out that in some jurisdictions, the training organisation was responsible for lodging details with the relevant consumer agency.

It was proposed that CPD points should be credited on an annual basis rather than on the licence or registration anniversary, as this would give more flexibility for people in rural NSW. Not everyone saw the benefit of this as some points could be carried over under current arrangements, but the proposal appeared to give people a little more flexibility.

One organisation proposed that NSW adopt the WA model where providers must submit and seek approval for their CPD programs. In that state, providers are also responsible for uploading participant data to a central database.

One of the issues identified by ALPA and included in the consultation paper related to cross border mutual recognition. The panel asked people in rural areas whether this was an issue and was advised that while it did arise as an issue from time to time, it was not a significant problem. Agents advised that if they needed to have two licenses, then they simply acquired both. The only significant but infrequent issue was that people from Victoria were known to sell livestock in NSW without a licence.

There were clearly different views about which issues should be addressed by training and which issues were more properly addressed through compliance. Although some conduct may result from a lack of knowledge about the law and could be addressed through training, this was also potentially a compliance issue. The panel was told that many buyers' agents presented clients with 'investment opportunities' in a manner that appeared to constitute the provision of financial advice without a relevant AISC license. Although this problem might be dealt with through more training, the panel thought that this was also a significant compliance matter.

People were asked how problems of non-compliance were identified and the panel was told that Fair Trading addresses only consumer complaints. The panel understands that Fair Trading will not investigate complaints about agents by other agents. A few respondents said that when people were found to have done something wrong, that the consequences were inadequate and they were of the view that Fair Trading is not tough enough.

People said that Fair Trading is seldom seen in the field. It was also said that people generally knew when Fair Trading officers were conducting visits and there was plenty of warning about compliance audits. On the other hand, one business complained that Fair Trading officers were heavy handed and conducted themselves in an aggressive and disrespectful manner.

It was suggested that there is poor collaboration between industry and the Department and that this was much worse now than it had been a few years ago.

One of the issues that were raised by a number of stakeholders was the delay experienced in obtaining police checks and clearances once an application has been made for a certificate of registration. It was reported that this time period has blown out to eight or nine weeks. This meant

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that if a person was employed at the beginning of the application process, they could not undertake any real estate work for a period of up to nine weeks. It was suggested that this delay did not occur in other states where applicants provided their own police checks, which were obtained in a much shorter time.

There was some discussion about the lack of public confidence in the real estate industry. Polling suggests that only nine per cent of the population trust real estate agents and that this level of trust is only slightly higher than car salespersons at six percent. It was mentioned that in NZ, the Property Agents Board reported a 70 percent satisfaction level with agents in NZ. It was also pointed out that this was after contact with an agent and some people thought that levels of satisfaction after contact and sale would be much higher than nine percent in NSW. Nevertheless, the panel understands that the level of trust in real estate agents was much higher in rural NSW, mainly because of the establishment of longer-term relationships between stock and station agents.

Finally, there was some discussion about professionalism and the role of industry associations. There does not seem to be a clear understanding of what professionalism means and a number of people struggled to state the benefits of belonging to an association, although some people mentioned cut-rate insurance and legal support. The concept of self-regulation was raised although the precise nature of self-regulation was unclear, other than giving industry the role of determining education standards.

The REINSW suggested that the quality of CPD would be improved if there was an approval process and suggested that the real estate reference group could perform this function. The panel felt that this concept of self-regulation needed to be explored further before it could be fully understood and evaluated.

It was acknowledged that membership of industry associations was low, however, it was stated that the quality of training provided by industry associations was better than that provided by many other RTOs, particularly with respect to the delivery of CPD.

The panel believes that the consultation process helped the panel gain a good understanding of the industry but notes that there was no representation from consumers or consumer organisations and no representation from Sydney's diverse ethnic communities where the panel believes there may be other issues that have not been raised during the consultation process.