

SUBMISSION

A REVIEW OF TRAINING FOR LICENSED OCCUPATIONS IN THE NEW SOUTH WALES PROPERTY SERVICES INDUSTRY

To:

Property Training Review, Real Estate & Property

NSW Fair Trading

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Estate Agents Co-operative Ltd or EAC is the largest real estate co-operative in Australia with a history spanning back to 1960. Our Membership is made up of both independent offices and offices from all the major franchise groups and overall we provide services to some 1800 real estate offices.

We provide a broad range of professional and information technology related services to the real estate and property industry as well as consumers through our realestateworld.com.au website and publications. Our services include Membership Services, Practice Support and Advice, Professional Development and Training, Real Estate Forms & Merchandise, Property Data, Listing Services, Website Design and Hosting, Consumer publications and property portal. Our brands and trademarks include realestateworld.com.au and Red Square and Multilist.

EAC would like to note its appreciation for the opportunity provided to meet with the Training Review Committee and to lodge this submission. We look forward to the final report and to further discussions on Recommendations that will follow.

Please do not hesitate to call Geoff Hunter or David Crombie for any further information or clarification of the issues raised.

Yours Sincerely

David Crombie

Chief Executive Officer

Response to Stakeholder Questions

1. Applying the model

1.1 Are there additional risks that should be included in an assessment of training standards?

The risks identified in the Consultation Paper are, understandably, indicative only and clearly need greater definition. EAC however would disagree with the suggestion that a Level 3 or a Level 4 risk should have less importance placed on them because they are “conduct or behaviour prohibited by other State Departments or other Governments (presumably Federal, Level 3) or conduct which is not prohibited but could contribute to consumer detriment” (Level 4).

The Property Stock and Business Agents Act (the Act) Rules of Conduct requires agents to “have a knowledge and understanding of the Act and regulations under the Act, and such other laws relevant to the category of licence or certificate held (including laws relating to residential tenancy, fair trading, trade practices, anti-discrimination and privacy) as maybe necessary to enable the agent to exercise his or her function as agent lawfully”.

To suggest that risks that fall under legislation not managed by Fair Trading and therefore “are not core risks that must be addressed through mandatory training of property agents” (See Consultation Paper, Page 13, Para. 3) is in EAC’s opinion an incorrect supposition.

Whilst it is clearly understood that Fair Trading cannot administer all the laws relating to the vast arena of property related activity that does not mean that the agents should not be trained and assessed in their relevant responsibilities under those laws outside Fair Trading’s administration.

Work Health and Safety including asbestos risk, conveyancing, land titles and exchanging contracts, Foreign Investment, Local Government and some taxation issues including depreciation schedules as they relate to property investment to name just a few. All are “laws relevant” to real estate practice.

This is not to suggest that agents should become advisors in all these fields but they must be aware and understand the presence and their likely application to property related issues.

From the consumer’s point of view “a risk is a risk is a risk”, so when they commit their property to an agent to lease, manage or sell they expect the agent to know how to perform the service competently. To restate the obvious the Rules of Conduct require an agent to have a knowledge and understanding of “such other laws relevant” so why wouldn’t training encompass the already legislated legal requirements?

The risks in real estate practice span a broad spectrum and for agents to meet the ever increasing expectations of consumers (vendors, purchasers, lessors, lessees etc.) for agency services the training must provide the required knowledge and skills.

1.2 Are there issues that should be considered in assessing training standards? If so what are they?

(a) Effective Supervision

Section 32 of the Act and associated Commissioners Guidelines for Proper Supervision make it abundantly clear that the final responsibility for running the business rests with the licensee-in-charge. It is EAC's experience that this responsibility is either not understood or ignored by many licensees. Either they haven't been trained or they choose to delegate or bypass the duty. This is particularly noticeable with recent entrants to real estate practice.

Many principals are "selling principals" and want/need to spend the majority of their time in listing and selling property to generate income. As a consequence the internal office policies and procedures are neglected and employees are left to their own devices.

As part of member service EAC conducts a "Practice Support Line" whereby members and their employees can phone or email for advice on any practice issue. It is our experience that the majority of these calls come from employees and many of those calls which relate to basic legislation and correct procedures indicate that the licensee-in-charge does not know and has suggested that they call EAC. Whilst it is not anticipated that the licensee is an expert in all fields the nature of the enquiry is basic and should be understood.

The skill and knowledge levels of many licensees-in-charge are inadequate and need to be addressed. (see later comments on suggested change to licensee-in-charge qualifications).

(b) Property Management

It is also clear from EAC's experience in practice support that property managers need additional training in:

- I. Tribunal matters;
- II. More detailed understanding of lessor and lessee responsibilities under the residential tenancy agreement;
- III. Disclosure of material facts, including mould and asbestos;
- IV. Retail and Commercial leases (short form);
- V. Risk management and liability for negligence.

1.3 What do you think should be the minimum education standards for each category and why?

(a) Entry Level (Certificate of Registration)

Before commenting on the entry level standard for certificate of registration it should be noted that the current administration process adopted by Fair Trading is causing significant delays in commencing employment. Delays of 4-6 weeks are not unusual after an application is lodged with the consequence that the applicant who has already completed this course cannot commence work. This is a major frustration for the prospective employer and a significant economic loss for the employee. Whilst this is not part of the Committee's Terms of Reference it should be noted as a problem and needs to be addressed by Fair Trading.

The further problem with the existing certificate of registration structure is that a person can enter the industry completing four units, perform the task of a property manager or sales person and for the rest of their career in real estate engage in no more training other than 4 hours per year CPD, which currently maybe of doubtful use to them as it may not contain any new learning topics or provide any new skills.

It is common, but uninformed, to ask "What does that matter the licensee-in-charge has the responsibility to supervise? All that means is that there is no structured learning or career path for new entrants and in many cases it is "the blind leading the blind". Many employees in real estate "don't know what they don't know" and most unfortunately there are numerous principals in the same category. The risk to both the practitioner and the consumer are significant and obvious.

EAC holds the very strong view that new entrants to real estate should be required to successfully complete 7 prescribed units from the Certificate IV in Property Services and then receive a "Provisional Agents Certificate". That person will then be required to complete the remaining 17 units over a two year period to acquire a full Certificate IV in Property Services (Real Estate) and to have the provisional status removed.

The 7 units suggested are:

- I. CPPDSM4080A Work in the real estate industry;
- II. CPPDSM4008A Identify legal and ethical requirements of property sales to complete agency work;
- III. CPPDSM4007A Identify legal and ethical requirements of property management to complete agency work;
- IV. CPPDSM3019D Communicate with clients as part of agency operations;
- V. CPPDSM4003A Appraise property;
- VI. CPPDSM4011A List property for lease;

VII. CPPDSM4012A List property for sale.

This structure, 7+17 units, provides the new entrant with a clearly defined learning pathway which is not dependent on the skill and knowledge of the employer or hampered by the lack thereof.

(b) Licence

Currently any person who holds a Real Estate Agents Licence in New South Wales can operate their own business without having any prior experience. They can then employ Certificate of Registration holders who are also new entrants to the industry, have limited training and no experience to whom they have to pay an award wage or they can employ a licensed person on a commission only basis also who may not have any prior experience. So we have a group of people poorly trained all with limited or no experience. This is a recipe for widespread consumer detriment and needs to be rectified.

EAC agrees with the widely held view of existing licensees and other industry bodies that the applicant for a real estate licence must have successfully completed the Diploma in Property Services (Agency Management) CPP50307.

(c) Licensee-in-Charge

EAC are firmly of the view that any person wishing to act as the licensee-in-charge of a business, either their own or as an employed licensee of another entity who own the business must have a minimum of 2 year's experience in addition to the Diploma in Property Services referred to above.

2. Experience

2.1 Although it is clearly possible to enter the property services industry without any experience, how often does this occur?

Probably only the regulator can answer this question with any accuracy as they are the only ones in possession of the completed application forms which may show the applicants previous history. However, it is EAC's recent experience that the number of licence holders setting up businesses without any prior experience is increasing significantly.

The number and type of calls received on the EAC support line also clearly demonstrates the total lack of experience in many new applicants for Membership.

2.2 What are the practical consequences of the absence of a time based requirement to enter the property services industry?

The deterioration in agency standards following the introduction of "competency based" qualifications in 2003 and the removal of the 2 year experience requirement

was clearly evident. There is no doubt that most of the skills required by operatives in any licence category are initially obtained in the work place and refined by application and experience. The problem remains that not all the experience is good experience so inadequate services are rendered. Competency based qualifications may provide the basic theory but it does not, and cannot in either its current or proposed form, provide the “can do”.

There are no “flight simulators” in real estate training nor in most other occupations that come to mind. Even the pilots who do many hours in the simulator don’t get the captains badge until skills have been demonstrated under rigorous supervision by highly experienced pilots. Throughout the trades of electricians, carpenters, bricklayers, mechanics and many other trades even elevating to doctors, dentists and lawyers no one gets final clearance until supervised experience is obtained and proper assessment is completed.

2.3 What does time based experience achieve?

Time based experience reinforces the classroom learning and allows the practitioner to develop their skills in real life situations which are seldom practiced in the classroom.

Under the suggested educational programme for Certificate of Registration holders the student will take the initial 7 units of competence into the workplace, observe how the principles are applied and then progress through a further 17 units within the context of practical application over the next 2 years. The additional 17 units provide a benchmark for the student to measure the various practices and procedures currently in place in their own office and creates the opportunity to introduce change based on an expanding knowledge base and proper instruction. This experience would then be enhanced by properly constructed CPD.

3. Ongoing training requirements for the property services industry

3.1 What needs do the current CPD requirements meet?

There is no doubt that CPD properly structured with informed content and delivered by qualified and experienced trainers is of great benefit to practitioners. The stated aims in the Director Generals Guidelines are achieved if the above criteria are met. Unfortunately 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.

3.2 What are the benefits of CPD and what are the costs to business?

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.

The overall cost of CPD falls into 2 categories with these being employee cost and employer cost. The ultimate responsibility of completing CPD rests with the individual so in many cases the employee meets the cost out of their own pocket. In a much lesser number of structures some employers do cover the cost or subsidise the cost in some way.

The cost to the employer is the time spent out of the office by the employee.

Whatever system is in place within individual offices the cost is insignificant when compared to the improvement in knowledge and skills, the improvement in service standards and efficiency, the lessening of consumer risk and a significant reduction in negligence claims.

3.3 What are the problems or issues with the existing CPD regime within NSW?

The major problems with CPD are content and delivery. To ensure that content is relevant and reflects changing practices and legislation then a percentage of that content must be determined by the regulator in consultation with recognised industry bodies. Industry bodies, because of regular contact with their membership base and assisting with practice support issues, are aware of the practice areas that agents need assistance with and areas where there are shortfalls in meeting consumer expectations. The further benefit for the regulator will be that matters that they believe need to be communicated to practitioners can be included.

The role of some RTO's and their trainers need to be managed more closely. Many are not meeting expectations.

3.4 Are the current requirements relevant?

In a broad sense, yes. However, for the future, if improved training standards and outcomes are to be achieved then content will need to be more prescriptive with a portion being mandated by the regulator as mentioned above.

4. How and by whom initial and ongoing training should be provided and how and by whom initial and ongoing competency should be assessed?

4.1 What are the current problems with the delivery and assessment of training for the property services industry?

- I. Training content is often not relevant or specific;
- II. Trainers lack industry knowledge and the practical application of principles to practice;
- III. Assessments are often vague in testing specific outcomes and are loosely managed;
- IV. Recognition of prior learning is often poorly handled and has no relation to a detailed understanding of the topic. For example, a property manager seeking to obtain a licence may have worked in an office where auctions were conducted but that does not mean that they have a detailed understanding of auction procedures or legislation. Anecdotally this type of experience where the mere association with an agency service is deemed competent, occurs frequently.

It should be said that not all RTO's are deficient in the RPL process but many are. It remains to be seen whether the new standards will make any difference, one can only hope so.

4.2 What problems have arisen and what are the impacts on the industry?

See 4.1 for problems.

The inconsistent quality of CPD seriously diminishes the potential for achieving the basic aims and defeats the purpose of setting CPD standards. Anecdotally, based on input from members and their employees, the industry feeling is that between 50% and 70% of CPD training is deficient in useful content and does not meet either the needs of the students or the regulator.

4.3 What changes should be made to the delivery and assessment of training for the property services industry?

- I. CPD content should in part, possibly 50%, be set and approved by the regulator in consultation with industry bodies. This will ensure that legislation, legal interpretations, procedural changes and consumer identified shortfalls in agency services can be addressed and included in the mandated component of CPD for the benefit of all practitioners.
- II. Qualifications of trainers should be higher than the qualifications being taught and industry experience should be verified.
- III. Assessments to be used by RTO's should be more closely monitored. RPL assessments must have more attention to specific task related skills and be evidence based.

5. Mutual recognition for the auctioning of property and livestock.

5.1 What are the key issues in relation to cross border operations of property and livestock achieve (sic)?

The problems with mutual recognition are identical to the problems uncovered with the recently abandoned Proposal for National Licensing for Property Occupations. This proposal consumed millions of dollars, thousands of hours by hundreds of people, took something over 3 years to construct and seek comment and ended as a very embarrassing, smoking "train wreck". The reasons for its failure are well understood by all those involved and don't need repeating in this context.

The topic heading (5) above joins property and livestock but does not distinguish whether "property" includes residential, commercial and rural or applies to rural only. I have assumed that for the purpose of this response that "property" is used comprehensively and includes residential, commercial and rural.

There needs to be a clear distinction between the treatment of livestock and the treatment of property as they are vastly different, the circumstances of their sale are different, the legislative and compliance issues are different and the whole transactional process bears no similarity to real property. They cannot be considered jointly.

Without putting too much detail in this summary the key issues regarding the auctioning of real property are as follows:

- (a) All eight States and Territories have legislation that differs significantly. This legislation covers essential core issues for agency practice and consumer protection such as trust accounting, agency agreements, contracts for sale, conveyancing, rules of auction, vendor bidding, disclosure notices etc. Compliance without additional state specific training is highly unlikely.
- (b) All eight States and Territories have different licensing standards and qualifications for auctioneers.
- (c) There is no harmonisation between any of the above so to cross the border and auction real property, be it rural, residential or commercial, is an exercise fraught with professional risk for the auctioneer and obvious consumer risk to all parties involved.

5.2 What are the current barriers to achieving mutual recognition?

The short answer to the question is within (a), (b) and (c) above.

Reality is that unless all the States and Territories can harmonise legislation and licensing standards, mutual recognition will continue to be a very inadequate temporary fix that does not solve the continuing problem of poor agency practice and potential risks to consumers of agency services.

5.3 How might we improve mutual recognition for auctioning of property and livestock?

(a) Property

With regard to mutual recognition of auctioning (rural) property please see 5.1 and 5.2 above.

(b) Livestock

With regard to mutual recognition for the auctioning of livestock, EAC advise that we have been provided with a copy of Part 5 of the submission submitted by the Australian, Livestock and Property Agents Association (ALPA) and would ask the Review Committee to note that EAC support's ALPA's position insofar as it applies to the mutual recognition of livestock auctioneers.

END