

To Whom it May Concern,

I have just read over the review of training for licensed occupations in the New South Wales property services industry.

The email correspondence below and the first three PDF attachments are in response to questions 1.1, 1.2, 1.3, 2.1, 2.2, 2.3, 3.1, 3.2,3.3,3.4, 4.1, 4.2, 4.3, 5.1, 5.2 and 5.3 of the Consultation Paper.

The word document relates to my concerns around number of units and skills sets on draft qualification requirements, and is relevant to 4.1 and 4.3 of the Consultation Paper.

The last PDF attachment "Formal Submission Licensing Task Force 2012" is in response to 3.2 *What are the benefits of CPD?*, 3.3 *What are the problems or issues with the existing CPD regime in NSW?*, 3.4 *Are the current requirements relevant?*

The last attachment "CPD Recommendations to Fair Trading doc" is relevant to 3.1, 3.3, 4.1 and 4.3.

Kind Regards

George Rousos
Training Consultant

Dear Fair Trading,

I don't think increasing units of competency will improve the standards of the real estate industry – especially when there is an 80% churn rate. Increasing units of competency will only make it harder for employers to find workers.

The solution is to tighten up on the CPD requirements. We need a more holistic continuing education and training system for the property services industry .

This report is the final report of a three-year program of research that aimed to investigate what might constitute an effective continuing education and training system. The premise behind the project is that the entry-level focus of the current education and training system may not address the ongoing needs of Australian workers.

http://www.ncver.edu.au/wps/portal/vetdataportal/restricted/publicationContent!/ut/p/a1/IZFLU8IwFIV_TZclt0mbtu5QhIDyLA40GyYNLa3SB20A8dcbmHHjiGh2yZx859x7EEdLxAtxyDZCZwuhtuc7p6u-hR8Ys2EwZoxC3-3OZwF7IWBRTeAccVmoSqUoLOQhrlidNKup4bUC1j7aZvJAaA7Bn47O2ktkahUnkS5ElafreFaa99rHpORYxXWoTACjt7FBtHmpzuHLA8KdsWjJhPYrvtcRjQ4D-KJh1h48BgTH9LgB_2tEMPBqw54kFT84NANwRfgkZ6incqzGZg4J_rmVwa269t-x1t-Nt3UxZqPhdoeXNajR1sy2jS-dhu4iltOG8jpO4juvWvtbPqVJVC2eAAaolSwNo3hP-1OomnZ--pGWjbc9KVOW5R07m24x9zJN8YfLodPwEVJG1fA!!/dI5/d5/L2dBISEvZ0FBIS9nQSEh/

Kind Regards

George Rousos

Training Consultant

Dear Fair Trading,

Further to my previous correspondence on the 19/11/2015 and 18/12/2015, we are in the process of putting together an agreement for a third party to deliver CPD services on our behalf.

For your information, there are no clauses in the Standards for Registered Training Organisations, to do with CPD courses that are linked to a national training package outcome and how they are marketed.

We had a look through the Director General Guidelines but couldn't find anything in them about the standards of marketing.

Please take this into consideration, as part of your review of property industry training standards.

Kind Regards

George Rousos

Training Consultant

Industry Training Consultants 20/10/2011 Version 1.7 Criminal Deception in Real Estate 1

Criminal Deception in Real Estate

Real estate agents in NSW are often unaware that practices regarded as "standard" in the real estate industry are,

in fact, serious criminal offences. Furthermore, because the concept of agency involves a high degree of trust, an estate agent who commits a criminal offence through a "breach of trust" will be sentenced more harshly if found guilty. Any breach of trust is an aggravating factor in sentencing. The greater the breach of trust, the more likely it is that a term of imprisonment will result - even for someone with no prior criminal history. The fact that such practices may be common in the industry is neither a defence nor a mitigating factor to warrant leniency.

Obtaining Financial Advantage or Causing Financial Disadvantage

Under section 192D of the Crimes Act, obtain a financial advantage includes: obtain a financial advantage for oneself or for another person, and induce a third person to do something that results in oneself or another person obtaining a financial advantage, and keep a financial advantage that one has, whether the financial advantage is permanent or temporary.

In this part of the law it also states that a financial disadvantage means causing a financial disadvantage to another person, or inducing a third person to do something that results in another person suffering a financial disadvantage, whether the financial disadvantage is permanent or temporary.

The criminal offence of Obtaining Financial Advantage is a form of fraud. Section 192E Fraud of the Crimes Act 1900 states: *"A person who, by any deception, dishonestly obtains property belonging to another, or obtains any financial advantage or causes any financial disadvantage, is guilty of the offence of fraud and liable to imprisonment for a term not exceeding ten years."*

What Is A Deception?

Deception is an act to propagate beliefs that are not true, or not the whole truth (as in half-truths or omission). Deception can involve dissimulation, propaganda, and sleight of hand. It can employ distraction, camouflage or concealment. Section 192B of the Crimes Act states: *"deception means any deception (whether intentional or reckless) by words or conduct as to fact or as to law, including a deception as to the present intentions of the person using the deception or any other person."*

Examples of Obtaining Financial Advantage or Causing Financial Disadvantage by Deception in the property industry may fall under the following:

- using conditional contracts as a deception tool to avoid having to pass on a higher offer to the vendor could lead to a charge of criminal deception.

- avoiding to disclose the reserve price before the start of an auction – in order to get higher than the price that those who are aware of those facts would be prepared to pay can lead to a charge of criminal deception or inducing potential purchasers of property to believe that the stated price of a property is a fair market value when the price has been inflated by matters

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irrelevant to the value of the property, such as marketing fees, commissions and profits could lead to a charge of criminal deception.

- quoting a minimum sale price to prospective bidders at auction, that is less than the agents true estimate price and being the price, which the vendor is unwilling to sell for could lead to a charge of criminal deception.

- stating that disclosing the nature of buyer A's offer to buyer B is "confidential", when buyer A should be made aware of buyer B's request. If the statement is made - with the intention of disregarding that such a statement could be false and misleading and buyer B suffers "loss" as a consequence of that statement being made then such conduct could lead to a charge of criminal deception.

- concealing or refusing to disclose a buyer's contractual rights before the start of an auction – in order to induce a contract on the fall of the hammer could lead to a charge of criminal deception.

- concealing the nature of a counter offer to a buyer whose original offer was accepted and then later refused, but the agent knowingly disregards that concealing such information could be false and misleading and as a consequence of that statement being made buyer A suffers "loss", then such conduct could lead to a charge of criminal deception.

- intentionally using non-price advertising to induce someone to pay more than the undisclosed price quoted in the agency agreement could lead to a charge of criminal deception, Or a charge for intention to defraud by false or misleading statement under section 192G. Under this part of the law, a person who dishonestly makes or publishes, or concurs in making or publishing, any statement (whether or not in writing) that is false or misleading in a material particular with the intention of obtaining property belonging to another, or obtaining a financial advantage or causing a financial disadvantage, is guilty of the offence of fraud and liable to imprisonment for a term not exceeding five years.

Intentional or Reckless

An estate agent may say to a purchaser, "We already have an offer of \$260,000 for this property, so you'll have to increase your offer to beat that". If he makes that statement not knowing whether other offers have been made or not and either not caring whether the statement is true or false or hoping that the statement will turn out to be true, he is guilty of an offence if the statement does turn out to be untrue and, in consequence, the purchaser is induced to pay more for the property. It is sufficient to constitute a criminal offence if the estate agent, to obtain a financial advantage, makes a statement which he knows to be false or does not know to be true.

Words or Conduct While false statements are probably the most common methods of deception, conduct can also be sufficient. Doing something to conceal defects can amount to a deception.

For example, if an estate agent advises a vendor to paper over cracks in a wall so that a purchaser will be deceived into paying more for the property than its true condition warrants, then both the vendor and the estate agent could be found guilty of deception.

Or

The estate agent shows a house to a prospective purchaser, but is careful not to mention that the basement always flooded after moderate rainfall. He also agrees with the buyer that the basement would make a wonderful carpeted rec room. This is another example where an agent could be found guilty of deception.

"Caveat emptor" (let the buyer beware) is not a defence to a criminal offence. Industry Training Consultants 20/10/2011 Version 1.7 Criminal Deception in Real Estate 3

What Must The Prosecution Prove? To have a person found guilty of Obtaining Financial Advantage by Deception, the prosecution must prove:

Identity - It must be shown that the accused is the person who committed offence. This is usually done by way of admissions made by the accused, witnesses providing evidence of statements made or the conduct of the accused, or circumstantial evidence.

Deception - A deception may be made by any misleading conduct or statement, whether by an act or omission. It may be a deception as to fact or law or as to the present intentions of the accused or another person. The deception may be either deliberate or reckless. It needs to be proved that a financial advantage was obtained by means of the deception. **Obtaining** - This includes obtaining for another or enabling another to obtain or retain. For example, the estate agent is aware that a garden shed is a "fixture" that the purchaser is entitled to own as part of the purchase, but tells the purchaser that she can have it in return for allowing the vendor to remain in the property after settlement. The agent has obtained an advantage, not for himself, but for the vendor. **Financial Advantage** - The Oxford dictionary definition defines "financial" as being of or pertaining to finance or money matters. It defines "advantage" as having the better of another in any respect, superiority, benefit, profit. An easy way to understand the

concept is in terms of reducing, delaying or deferring, or evading the payment of a debt. Even if payment is delayed for a period of time, and then paid, the offence is still committed if the delay is the result of a trick.

August 15, 2012

To the Licensing Taskforce Team,

This is a formal submission with respect to one specific area of deregulation of the Regulation Impact Statement for Proposal of National Licensing for Property Occupations – being the removal of current requirements for mandatory continuing professional development.

After reading through the consultation regulation impact statement this evening, one area that I am totally perplexed by, is the proposal to deregulate mandatory continuing professional development in New South Wales, Western Australia, Tasmania and the Australian Capital Territory. I'm sorry, but going with this proposal would only erode standards to abysmal levels. If anything, it should be regulated and a mandatory requirement in each state of Australia. The ongoing CPD training is a critical component to training and education, as it is aimed at maximising consumer protection outcomes, maintaining public confidence by ensuring that agents are continually updating their skills and reducing disputes within the property industry. I will go further by saying, that many agents have said to me, that CPD helped them avoid legal disputes, by renegeing strategies to the nitty-gritty of daily trading practices. It gave them the knowledge and confidence they needed to hedge their risk when doing a job, and dealing with the public.

For the advisory committee to come out and say, that professional development should not be ongoing but applied on a needs-only basis such as, when new legislation is introduced and that it should not be a compulsory part of licence renewal - is totally absurd. I believe this committee is made up of only 11 industry stakeholders who are failing to understand that many trainers in NSW, such as myself - are regularly sending letters to Fair Trading, to advise them of identified areas of marketplace concern and where changes of the law need to be made. It is this feedback derived from CPD classes that has assisted the NSW Office of Fair Trading, in considering a set of compliance standards to form part of a requirement of National Licensing in NSW or other regulatory approaches that may involve the Australian, Securities and Investment Commission in the future.

I'm sure, if you did some research, you would also find the majority of badly behaved real estate agents in Australia are generally those agents, based in both Queensland and Victoria, where it is not a legislative requirement in either of those states for an agent to complete on-going CPD training. It should also be highlighted, that in today's tough economic environment, the minimum qualification requirement to work in the property industry should be that of a Certificate IV. A statement of attainment issued to a student who has completed only four units of competency to work in one of the most treacherous industries in the country, is a crucial flaw within the real estate system. The very low level qualification designed as a pathway into the property industry, is quite appalling, given that we are allowing under qualified and under skilled professionals to manage or sell the consumer's most valuable asset.

In the current economic climate, training organisations within the property industry are now facing challenges with theoretical approaches. The rapid changes in the nature of work, law reform and the ethical misunderstandings which arise, from different ethical perceptions of real estate practices - are the main challenges facing learning and development for organisations. To ensure the current misunderstandings or behavioural development levels are meeting the changing needs of the workplace and changing market conditions, every trainer needs to focus on propositional knowledge or what things mean through reflecting on a student's experience through on going continuing professional development. We recently conducted extensive research and completed projects on key corporate responsibility issues of the real estate industry. Our research focused on systemic failings of transparency that cause consumer detriment and problematic behaviour. Together with our internal and external stakeholders, we concluded that the dysfunctional behaviour in the selling process of real estate would only lead to an increase in litigation and social disharmony in the future. This will be an extremely difficult, if not impossible challenge for trainers to apply more reasoning and vicarious learning to their teachings, if the ongoing CPD requirements were somewhat deregulated or removed.

CPD is a launchpad for systemic change and innovation, but most of all; it builds and sustains a quality workforce in a new economy. Under the National Agreement for Skills and Workforce Development over the next five years, it is expected will provide the industry with a better qualified and flexible workforce overtime, and will assist in meeting skills shortages in key areas of the economy. The creation of a National Training Entitlement is anticipated to provide all working age Australians guaranteed access to a government subsidised training place, up to their first Certificate III. So CPD, will prove to be invaluable for a registered agent in the future, as it will open up an opportunity to pursue qualifications at a higher level and assist in meeting other skill shortages or skill gaps in the biggest market of Australia - that being real estate.

So please allow commonsense to prevail in this all important matter, by" NOT" deregulating what the property industry needs right now more than anything else, and that is, ongoing training and education.

Kind Regards

George Rousos Director Industry Training Consultants

CPD Recommendations to Fair Trading NSW

Recommendation 1

- When renewing a licence or certificate online or filling out the printed version, there should be a section for training provider (e.g. RTO or Industry Association Body), who the training was delivered by, the topic, date of training and points accumulated.

Recommendation 2

- Desktop audits via the training provider.

Recommendation 3

Business Rules for Assessment of CPD for RTO's

- Any written or verbal questions must be supported by benchmark responses.
- A minimum of two assessment methods must be used (and more likely to be required)
- Observations must be recorded in sufficient to demonstrate the assessor's judgement. Observation tools must include a 'comments' column for assessor comments
- Observation criteria must be observable and align to the specific assessment tasks
- All assessments must be supported by detailed instructions for the candidate and assessor

- All assessments must include observations of either skills being demonstrated or work related products
- Third Party observation cannot be used as a primary form of observation evidence (cannot outsource “assessment” to supervisors)
- The assessment being applied must relate directly to the TAS
- Assessment mapping must be completed to demonstrate that all aspects of the unit/s are being assessed
- If using commercial assessment resources, these must be validated and customised/amended as required by your RTO.
- Evidence used to demonstrate currency must be no older than 12 months
- All student assessments must be supported by authentication mechanisms (declaration)
- All assessments must be supported by scheduled moderation to ensure reliability (validating).

Recommendation 3

- Training providers should use Fair Tradings developed guidelines and industry standard fact sheets. This would ensure the full benefits of the CPD scheme were being fulfilled and that trainers were establishing and maintaining appropriate mechanisms for continuous information dissemination.

Recommendation 4

- Structured learning with an assessed learning outcome linked to either a relevant Australian university qualification or a relevant national training package outcome delivered by a registered training organisation constitutes 3 points per hour. However, an activity with an identifiable learning outcome delivered by an industry association, or government agency such as the NSW Department of industry and Investment or NSW Fair Trading should only constitute 2 points per hour. RTO’s have an obligation to comply with relevant Commonwealth, state or territory legislation and other regulatory requirements – in particular the new data reporting requirements, which are due to take effect from 1 January 2014.