

REAL ESTATE INSTITUTE OF NEW SOUTH WALES
REAL AGENCY POLICY

01. Real Agency Policy

REINSW seeks amendments to the existing regulatory environment to better enable property industry professionals to service the needs of property industry consumers efficiently and proficiently.

An effective regulatory environment should:

- Focus on the need for compliance with professional standards, rather than adherence to an overly prescriptive, micro-managed and bureaucratic regime. Professionals should be professionals, not red tape processors.
- Ensure that professionals servicing consumers in the property industry meet minimum standards of competency sufficient to provide professional service to consumers of the services supplied by the industry.
- Establish an efficient and comprehensive “safety net” to those who suffer loss arising from the provision of services in the industry.

The current regulatory environment in New South Wales falls short of best practice in each of these areas.

REINSW believes it can make a valuable contribution to the regulatory environment and professional conduct of real estate agents in New South Wales. This can be achieved through an industry-funded and shared regulatory function with NSW Fair Trading.

02. Red tape reduction

The property services profession is one of several industries primarily regulated by NSW Fair Trading. The Department has supervisory responsibility for numerous industries, including car dealers and repairers, conveyancers, fitness industry operators, funeral providers, second-hand dealers and travel agents. None of those industries are regulated in the detail devoted to the property services industry.¹ None of those operating in those industries has the compliance burden of the property professional.

Given the importance of the property services industry to the economy of New South Wales, and the significance of property transactions to consumers of real estate services, it is entirely appropriate that the profession be regulated.² Having said that, an overly prescriptive regime such as that which currently operates in New South Wales inhibits the efficient delivery of services.

The industry would be better served by focusing on outcomes for property industry consumers rather than the processes by which those outcomes are achieved. For instance, is mechanically “ticking off” a prescriptive checklist of steps to be followed at a real estate auction more important than ensuring that consumers are aware of the procedures to be followed at the auction (including the standard conditions of auction)? Is it appropriate and productive that resources of the agent and of the regulator are applied to, for example, a minute assessment of whether there are sufficient signs placed at the auction venue so that every bidder can see a sign from any part of the auction room?

Agents ought to be directing their efforts towards positive consumer outcomes rather than meeting an overwhelming list of compliance obligations. The regulator that attempts to fit the property professional (and therefore the consumer of property services) into a complex prescriptive straitjacket does the consumer a disservice.

Government should embrace a move from the current regime that focuses on a prescribed set of procedures and processes which the consumer receives. The primary focus should be on the service the consumer wants, and the property professional wishes to deliver, rather than whether a particular document was effectively served within a nominated time, or whether one prescribed term in an agency agreement is located immediately next to another prescribed term. A property professional should have greater freedom to tailor services to meet the needs of the client rather than devoting time and energy to considering whether every checkbox on a lengthy compliance list has been ticked. Slavish adherence to a lengthy checklist subordinates the agent's duty to the client to the regulatory provisions.

A further difficulty with the current, overly prescriptive framework is that it frequently fails to keep up with valuable innovations and developments in the industry. To take one example, the Act does not allow the use of modern means of electronic communication.

1. A comparative table setting out the detail of the compliance burden of these industries is Annexure 1.

2. Indeed, when a proposal was before Government to de-regulate the strata management sector of the property services profession, the REINSW strongly opposed the proposal, and welcomed the abandonment of the proposal.

03. Education standards for the profession

The property services industry is dynamic. Effective and appropriate educational standards are vital to ensure that those in the industry maintain sufficient standards of knowledge and professional skills.

Diploma level entry qualifications

The property services profession is subject to minimal entry-level educational requirements. Many property services consumers listing their home for sale or rent would be surprised to know that the salesperson or registered manager handling their property may have had as little as three days' training.

Entry-level qualifications should be set at a minimum of Diploma level. This will ensure a better prepared property professional, and better protection and better outcomes for consumers.

One fundamental obligation of any licensee or registered person is to "have a knowledge and understanding of the Act and the regulations under the Act, and such other laws relevant to the category of licence or certificate of registration held (including, laws relating to residential tenancy, fair trading, trade practices, anti-discrimination and privacy) as may be necessary to enable the agent to exercise his or her functions as agent lawfully".³

It is not possible to acquire the skills and underpinning knowledge needed to work in the property services industry in a three-day training course. Paradoxically, the greater the degree of regulation of the profession, the less likely that the current entry-level requirements will adequately equip an entrant to meet that obligation (let alone develop the other skills necessary to effectively represent consumers of property services).

Increasing the minimum entry-level educational requirements will ensure that real estate professionals have sufficient skills and expertise to operate in a constantly evolving industry. A higher entry-level educational requirement will also provide an incentive to pursue a long term professional career in the industry, with benefits flowing to all stakeholders.

12 months industry experience as a pre-requisite to holding a licence

There should be a requirement for a minimum of 12 months' working experience as a pre-requisite to a certificate-holder becoming a licensee.

Practical experience is an invaluable component of a professional's development and would give both consumers and professionals the confidence to know that the competencies learned in training have been proven and applied in practice before the real estate professional becomes entitled to operate unsupervised.

Practical experience is a pre-requisite to the attainment of qualifications for many professions and occupations, and the real estate agent's profession should be no exception.

Continuing professional development

All property professionals should be required to undertake continuing professional development (CPD) as a condition of maintaining their certificate or licence.

Inadequate policing/auditing of compliance with CPD requirements has contributed to a situation where evasion of obligations has become commonplace and therefore the positive impact of having the CPD requirements in place are less apparent than if there were full compliance.

Other professions require members to undertake CPD and the consumers of real estate services are entitled to have the assurance that their agent is legally required to keep up to date with the latest industry and legislative developments.

3. Property, Stock and Business Agents Regulation 2003, Sch 1, clause 1.

04. Partial self-regulation of the profession

REINSW has become increasingly concerned the administration of the current regulatory environment is not serving the interests of consumers, real estate agents and the market generally.

To be effective, the legislative intent of Parliament needs to be communicated to those market participants who are subject to its capture. Unless they have an understanding of the legislation and their obligations, which can only be provided through education, the benefits of a strong regulatory structure simply do not flow through to those to whom it is designed to benefit. Put simply, you cannot comply with that which you do not know or understand.

By restructuring the regulatory environment, agents will be better able to deliver a high standard and professional service. The flow-on effect will be an increase in consumers' confidence and the importance they place on the value agents bring to property transactions.

REINSW believes it can make a valuable contribution to the regulatory environment and professional conduct of real estate agents in NSW. This can be achieved through an industry funded and shared regulatory function with NSW Fair Trading.

REINSW's proposal includes the following components:

1. Ministerial governing/advisory committee

The Committee will have representatives from REINSW (appointed by the Minister) and NSW Fair Trading, and will be chaired by the Commissioner of Fair Trading. The Committee will have the benefit of data gathered from REINSW's activities and, from that data, will constantly refine the services delivered by REINSW.

2. Compliance reviews

REINSW will conduct compliance reviews of each and every real estate office in NSW over a period of time, in accordance with an audit program created and maintained by the Committee. This function will be largely educational with the focus on encouraging compliance with the agent's various obligations.

3. Complaints management/mediation

It has been the experience of REINSW that most consumer complaints/disputes can be resolved by mediation. The mediation process would seek to involve the parties in reaching a satisfactory resolution. The parties will be offered the opportunity to resolve their dispute, but if this is unsuccessful then the more formal dispute resolution processes remain available.

4. Maintenance of continuing professional development professional indemnity insurance registers

REINSW will create and maintain a register of all agencies in NSW. This register will record the agents/agencies compliance with their obligations for CPD and professional indemnity insurance.

5. Business skills training

REINSW will work with the Committee to develop training material that will equip agents for the transition from employee to business owner. The training will be mandatory and agents will need to demonstrate competency prior to REINSW issuing the necessary certification that will enable NSW Fair Trading to remove the restriction of the licence and in doing so allow the agent to open their own business.

6. Continuing professional development

Education is the key to compliance. REINSW recommends that agents undertake six hours of mandatory professional development annually. Three hours must come from material developed and prescribed by the Committee. The remaining three hours would provide the agent with flexibility to pursue their specific areas of practice.

Annexure 1 - Comparative table

Licensing and regulation in New South Wales

Industry	Governing statute	Sections in Act	Regulation	Clauses in Regulation	Rules of conduct
Property services	Property, Stock & Business Agents Act 2002	236	Property, Stock & Business Agents Regulation	53, plus 16 Schedules	19 common to all categories, plus a further 55 applying to specific classes
Conveyancers	Conveyancers Licensing Act 2004	172	Conveyancers Licensing Regulation 2006	47, plus 4 Schedules	23
Car dealers	Motor Dealers Act 1974	130	Motor Dealers Regulation 2004	70, plus 3 Schedules	No
Car repairers	Motor Vehicle Repairs Act 1980	85	Motor Vehicle Repairs Regulation 1999	22, plus 1 Schedule	No
Pawnbrokers	Pawnbrokers and Second-hand Dealers Act 1996	74	Pawnbrokers and Second-hand Dealers Regulation 2008	39, plus 3 Schedules	No
Travel agents	Travel Agents Act	54	Travel Agents Regulation 2006	14, plus 2 Schedules	No
Fitness industry	Fitness Industry Code of Practice (voluntary)	70	N/A	N/A	N/A

Note 1: These three sections are specific to the funeral industry – funeral directors would have to comply with other provisions in the Act (as would persons operating in each of the industries mentioned in the Table).