

# **The Real Estate Institute of New South Wales Limited**

**Submission dated 5 December 2016**

## **Real Estate and Property Services Industry Reform Paper**

**To:**

Review of Training for Licensed  
Occupations in NSW Property Services  
Industry  
Fair Trading Policy

**By email:**

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## General Introduction

This submission prepared by The Real Estate Institute of New South Wales Limited (the “Institute”) is in response to the *Real Estate and Property Services Industry Reform Paper* (the “Paper”) which appears on the New South Wales Fair Trading (“Fair Trading”) website.

The Institute is the largest professional association of real estate agents and other property professionals in New South Wales. The Institute seeks to promote the best interests of members and the property sector on property-related issues and, in doing so, the Institute has a substantial role in the formation of regulatory policy and education standards in New South Wales.

The Institute is firmly of the view that the overwhelming majority of the issues that attract the attention of the regulator and aggravate consumers can be resolved by substantially improving the education of property professionals (the Profession/agent) for both entry and Continuing Professional Development (“CPD”).

The Institute appreciates the opportunity to lodge this submission and welcomes further discussion on the issues raised by this submission with the Minister and/or Fair Trading.

## Preliminary Comments

The Institute has been campaigning for over ten years for the training standards of CPD and entry level education to be reviewed and substantially improved. The Institute is, therefore, very supportive of the intention of the Paper.

The Hon. Minister for Innovation and Better Regulation Victor Dominello has regularly and publicly described the reforms contained within the Paper as “generational change”. The Institute strongly agrees with the Minister’s description. The Institute, however, believes that positive change is not guaranteed and will require on-going focused determination to achieve the outcomes that the property services sector requires and the consumer expects.

The Institute’s constant lobbying has opened the window for reform. This window will not stay open indefinitely and will not be opened again in the foreseeable future. Described colloquially *“this is our one chance to fix things, let’s not blow it*

There is a minority stakeholder group in this discussion, driven by their own commercial interests who have been to date and will no doubt continued to be, very vocal. It is incumbent on the Real Estate Reference Group (“RERG”) inclusive of Fair Trading to remain resolute in the pursuit of positive reform for the sector and not be distracted.

The Institute (along with other industry bodies) has been the solitary body calling for improvement to the training and educational standards in New South Wales. This sets the Institute apart from other stakeholders who put their commercial interests ahead of the best interests of the property services Industry and the consumer. Accordingly, going forward the Institute will, in collaboration with other

members of the RERG, have a substantial role in the implementation of the remedial activity contained within the Paper.

## **List of Reforms**

### **Part 1 – Licensing and Qualifications**

#### **1.1 Applicants for a certificate of registration in the property services industry must complete 7 units of competency from the Certificate IV qualification.**

It is essential for the creation of foundation knowledge that the new entrant receive enough education to prepare them for their career in the property services industry. This education will serve as an initial solid platform to launch the new entrant on their career journey in partnership with additional training (discussed later in this submission) and on-the-job experience.

Employers are often heard complaining that a new entrant is not “job ready”. The increase in the entry level education requirements will substantially address this issue. Importantly, the additional education will enhance the new entrants’ ability to respond positively to the consumer’s reasonable expectations of a competent and professional service provider.

In the Institute’s opinion there will be an additional and positive ancillary benefit with increased entry level education. The Institute predicts the increased education will drive a reduction in the churn of new entrants, estimated currently at 80%. A reduction in the churn builds the aggregate competency of the profession as practitioners invest in their chosen career and gain experience.

For all the reasons set out above, the Institute supports the proposed reform to increase the entry level education requirements from the current four (4) units of competence to seven (7).

#### **1.2 Require certificate holders to complete the qualifications for, and transition to, a full licence within 4 years**

Consistent with the Institute’s position set out in paragraph 1.1 above, the requirement for the new entrant to continue their education is essential for the new agent to grow and view, with confidence, the property services industry as a career.

Better training means better skills and in turn equals far less consumer complaints and better consumer outcomes.

It has been the experience of the Institute that many problems arise not from what the agent knows, but from what they do not know. Real estate practice is a very important, broad and complex area of our economy, and is no place for the inadequately skilled. Service providers

involved in property transactions must know how to competently traverse the requirements imposed on the delivery of a quality and professional service that meets the consumer's expectations.

The Institute views the proposed journey of the new entrant as the pathway to a professional advisor. Therefore, the Institute supports this proposed reform.

### **1.3 Exempt persons undertaking certain duties from the requirement to hold a certificate of registration unless they are also undertaking the duties of an agent**

There are many individuals working within a real estate agency and not all are professional real estate advisors. Without prescribing an exhaustive list, there are receptionists, book keepers, clerical assistants, marketing specialists and office administration managers. These individuals assist and support the real estate professional to deliver their services but they are not direct service providers. Accordingly, in the view of the Institute, they do not require specific real estate training or be part of a regulated environment.

The Institute believes that the RERG should be responsible for determining the tasks in a real estate agency that are the exclusive domain of the practitioner and the administration and support tasks that fall outside of that capture. In essence, this enquiry and ultimate determination will assign the various tasks to those who are trained and skilled to competently respond. One important consideration in determining what lies within the ambit of the licensed agent will be the need for the provision of advice to respond to the particular task.

The Institute supports this proposed reform.

### **1.4 Specify the activities which certificate holders can undertake and place greater emphasis on the responsibility of the licensee-in-charge to ensure proper supervision of staff**

There is an existing requirement for the licensee-in-charge to supervise all of their employees. However, the definition of appropriate and effective supervision is not clear. Providing clarity in regards to the responsibilities of the licensee-in-charge and defining the expected outcomes will put additional rigor, consistency and certainty around the supervision requirement.

By way of example only and without prescribing an exhaustive list, the Institute believes that trust account disbursements should be restricted to the licensee-in-charge and the Certificate of Registration ("COR") holder should have their agency agreements counter-signed by a licensed person.

The COR holder, due to their level of education and experience, needs greater supervision than a licensed employee. Putting a framework around this and bringing certainty to it will be of

significant assistance. The Institute considers that this is a task for the RERG to investigate and advise government.

The Institute supports this reform subject to additional clarity being provided.

**1.5 Applicants for a licence in the property services industry must obtain a Certificate IV qualification from the CPP07 Property Services Training Package, along with at least 12 months' practical experience**

Consistent with the Institute's position set out above, the combination of quality, relevant education and comprehensive experience is essential to grow the competent property services provider.

The Institute supports this proposed reform.

**1.6 Require licence applicants to provide evidence to NSW Fair Trading of the attainment of specified competencies during the 12 months' practical experience**

The education and training of property professionals has been plagued with poor quality providers who offer fast and cheap solutions, rather than quality education. In the opinion of the Institute, this unsatisfactory outcome has been able to thrive due, in part, to an inability to audit processes with the requisite degree of certainty. The key in such matters is always evidence and for individuals involved to take responsibility and ownership for the evidentiary material supplied.

The Institute is of the opinion that a standard and mandatory document should be created that requires the COR holder to describe and document the skills acquired. This document in addition must have their supervisor indicate by signature and comment that the skill has been attained. The RERG should be tasked with the design of this document and may be influenced by the evidentiary procedure required of the motor vehicle learner driver.

The Institute supports this proposed reform.

**1.7 Specify the activities which licence holders can undertake and place greater emphasis on the responsibility of the licensee-in-charge to ensure proper supervision of staff**

The Institute has addressed, in part, this proposed reform at paragraph 1.4 above.

The Institute holds the view that the licensee-in-charge should have the exclusive responsibility for:

- (a) Demonstrated and documented supervision procedures, for example ensuring a COR holder's agency agreement has been counter-signed by a licensed person;
- (b) Disbursement of all trust account funds;
- (c) Compliance of all employees with all legislative and regulatory instruments; and
- (d) Although covered in points (a) and (c) above, it is worthy of specific mention that all employees have satisfactorily completed their CPD and hold a current licence or certificate.

The Institute recommends this proposed reform be referred to the RERG for further analysis.

The Institute supports this proposed reform.

### **1.8 Create a new licence category of 'licensee-in-charge'**

The Institute views the creation of a new licensee category of "licensee-in-charge" as a means of distinguishing the person who has exclusive carriage and responsibility of specified duties, some of which have been discussed at paragraph 1.7. The creation of this category will assist with bringing certainty and clarity.

It appears to the Institute that the RERG could assist the licensee-in-charge with discharging their responsibilities by providing best practice procedures and proforma documents to evidence compliance. The Institute sees this as a journey of continuous improvement in documentation and procedures.

The Institute also views the creation of the licensee-in-charge category as the first step towards the co-regulation model discussed at Part 6 of the Paper.

The Institute supports this proposed reform.

### **1.9 Applicants for a 'licensee-in-charge' licence in the property services industry must obtain a diploma level qualification from the CPP07 Property Services Training Package (or a Certificate IV and an equivalent qualification in business management), and at least 2 years' experience within a licensed business**

The duties and responsibilities of the licensee-in-charge exceed those of the licensed agent. The licensee-in-charge has, in addition to the licensed person, all of the duties attaching to operating a regulatory compliant and profitable business. There is a plethora of requirements on business owners, including but most certainly not limited to:

- (a) Employees' contracts of employment, wages, superannuation, workers' compensation and taxation; and

(b) Various obligations prescribed by local, state and federal governments.

The additional education given in the diploma are predominantly business-related units and will, along with the two (2) years of mandatory practical experience, prepare the licensed person for the additional responsibilities attaching to operating a business.

The Institute asks rhetorically why permit an environment of ignorance? To permit a person to undertake an activity for which they are unskilled is paramount to becoming an accomplice to their failure. That is the current position and is grossly inadequate.

Accordingly, the proposed reform to address this issue is supported by the Institute.

#### **1.10 Applicants for a 'licensee-in-charge' licence will also be required to provide evidence to NSW Fair Trading of the attainment of specified competencies during the 2 years' practical experience**

The Institute supports this reform and suggests that the evidentiary requirement may be discharged in a similar way as described in paragraph 1.6 above.

The transitional provisions of the amending legislation will need to consider grandfathering the existing licensed people who are currently operating a business. Subject to further investigation and consideration, it may be prudent to require licensees-in-charge who have only recently commenced business operations to undertake business skills training by way of specifically designed CPD training.

#### **1.11 Update the supervision guidelines to clarify the licensee-in-charge's responsibilities**

The Institute re-states its comments at paragraph 1.7 above and, in addition, believes that updated supervision guidelines of a more granular nature would assist with compliance. The current supervision guidelines are a set of very high-level principles and, accordingly, lack the detailed guidance required.

The Institute supports this proposed reform.

#### **1.12 Incorporate the on-site residential property manager's licence, business agent's licence and buyers' agent's licence into the real estate agent's licence**

The Institute supports a simplified licensing regime. However, it must be appreciated that there are specific and specialised areas of agency practices that must be recognised to enable consumers to engage with the appropriate service provider. By way of example only, buyers' agents are attracting growing consumer demand. Consumers need to be supplied with the means to identify



the agent that has competencies in the field of practice that responds to the consumer's requirements.

The Institute is of the view that a simplified licensing regime can be supplemented in a co-regulatory environment where these areas of practice can be recognised. The Institute recommends the RERG investigate the journey towards co-regulation and advise government of its findings.

Subject to the comments above, the Institute supports this proposed reform.

### **1.13 Abolish the corporation licence**

The Institute supports this proposed reform. However, consideration in the transitional provisions of the amending legislation will need to be given to the existing contractual relationships an agency has with their principals. This is of particular importance in the property management area of practice.

### **1.14 Licensees-in-charge, licensees, and certificate holders will have the choice of a 1 or 5 year licence/certificate period**

Whilst the Institute welcomes the alleviation of the need to renew a COR or licence, consideration needs to be given to evidencing the COR/licence holder's various mandatory annual obligations, principally CPD and the issues set out in section 16 of the *Property, Stock and Business Agent's Act 2002*.

The solution to the CPD issue will not present an insurmountable problem in the view of the Institute. The RERG should be tasked with the development of a central register where agents and registered training organisations ("RTO") can lodge details of satisfactory completion of their mandatory training. This solution could be provided by either industry or Fair Trading.

In regards to the other requirements to continue to hold a COR or licence, these form part of the supervision obligations of the licensee-in-charge and a procedure to satisfy these requirements has been discussed above at paragraph 1.8.

Subject to the above comments, the Institute supports this proposed reform.

## **Part 2 – Continuing Professional Development**

### **2.1 For certificate holders, annual CPD for the first 4 years will be 6 competency units from a Certificate IV qualification until the qualification is completed**

The Institute supports this proposed reform.

### **2.2 As part of their supervision responsibilities, licensees-in-charge will be obligated to ensure that licensees and certificate holders complete the required CPD**

The Institute recommends that prescribed documentation be created for the licensee-in-charge to record the evidence gathered to support the supervision of this issue.

The Institute supports this proposed reform.

### **2.3 Annual CPD for licensees and licensees in charge will be increased from 12 points to 6 hours**

While not a complete remedy to all that ails CPD training, increasing the time and amount of CPD undertaken annually by agents is welcomed by the Institute.

It is no secret, and there is abundant evidence to demonstrate, that the quality of CPD training in the market today is appalling. Addressing this issue is unfortunately beyond the regulatory capture of Fair Trading. The Institute, therefore, recommends that the RERG be asked to gather evidence of poor training and refer same to the Australian Skills Quality Authority.

The Institute recommends that all training material and the means by which it is to be delivered be submitted to the RERG for approval.

Time invested in the attainment of education leading to additional and improved skills in one's chosen career, is time well spent. There are no short-cuts to competency; those trainers that offer that pathway are a blight on the industry. Those agents that utilise these providers set themselves up for failure. This is a serious issue that will impede the reforms' stated outcomes.

The Institute supports this proposed reform.

### **2.4 Licensees-in-charge must also complete an additional 3 hours CPD focusing on business skills**

The Institute re-states its comments set out above at paragraph 1.9.

The additional mandatory CPD imposed on the licensee-in-charge is a means of ensuring that the licensee-in-charge is cognisant of their current obligations as a real estate agency business owner.

The education requirements as a condition precedent to becoming entitled to be a licensee-in-charge requires continuous maintenance. We live and work in a complex and continually changing world. It is, therefore, paramount in the view of the Institute that a structured process of informing the licensee-in-charge of the current regulatory requirements and contemporary business practices be adopted.

It concerns the Institute that many business owners have minimal financial literacy skills and, accordingly, business decisions are made without the benefit of all of the data and a full understanding of that data.

There is ample evidence to support the proposition that the investment in education at the front-end pays dividends with reduced consumer dissatisfaction and the costs associated with same. It is however once again paramount that this training is delivered by quality providers and is relevant to operating a business in the property services industry. Accordingly the Institute recommends that the RERG be tasked with reviewing and approving all training material and the method of delivery.

The Institute supports this proposed reform.

## **2.5 Split 6 hours of CPD into compulsory and elective topics, 3 hours for each category**

The current CPD environment is not only of questionable value, it is also completely unstructured. In such an environment, there is no consistency of quality or content across the property services industry. Tangible outcomes are more often than not very hard to identify. It must also be said that practitioners naturally gravitate towards training that directly generates income rather than compliance training. Expressed differently, there are things that the agent wants to know and things they must know. The former is usually income-producing and is sought out, the latter is compliance training and is viewed poorly from a return-of-time-invested perspective.

Currently, it is possible to complete the CPD training requirement without any instruction whatsoever on the evolving regulatory environment. In these circumstances, practitioners remain ignorant of their regulatory obligations which places them in conflict with Fair Trading and, more importantly, diminishes their ability to deliver a competent and professional service.

In the view of the Institute, the requirement for all agents to undertake three (3) hours of regulatory compliance training is essential.

The Institute supports this proposed reform.

## **2.6 Establish an industry/government panel to determine and review compulsory CPD topics and the additional CPD for licensees in charge**

It must, unfortunately, be acknowledged that the vast majority of current CPD providers' training materials are of serious questionable value. If CPD is to achieve its desired outcomes, it will be necessary to apply far greater oversight of the content and delivery of the CPD.

The establishment of an industry/government panel to determine and review CPD for licensees-in-charge is a positive initiative and is supported by the Institute.

## **2.7 Compulsory topics can only be delivered by industry groups and Government agencies**

In the view of the Institute, to be a competent compliance training provider one needs to be fully invested in the regulatory environment and be an active participant in the development of new regulatory instruments. It should also be noted that industry groups form part of the RERG, and participation within this forum positions the industry groups uniquely in the CPD training market.

As a consequence of the industry groups' unique relationship with Fair Trading through the RERG, Fair Trading is able to have input into the training material delivered, ensuring it is a consistent and accurate representation of the topic.

Industry groups act in the best interests of their members, the market and, importantly, the consumer. Other commercial CPD training providers act in the best interests of their shareholders. This distinction is of critical importance in relation to this proposed reform.

Industry groups specialise in compliance training and deliver it exclusively. Whilst other training providers offer compliance training as part of a suite of training opportunities, this distinction once again positions the industry groups uniquely in the CPD training market.

Validation of the Institute's expertise in compliance training is evidenced by the attendance at the Institute's compliance training of other CPD training providers. It is common place when the Institute delivers its first training event on a new regulatory instrument to have amongst the audience other CPD providers who then use the Institute's training materials and tuition to commence training on the same topic shortly thereafter. Unfortunately, due to a lack in the depth of knowledge of attendees, they leave this training misunderstanding and misinterpreting information.

It must, unfortunately, also be recognised that the quality of CPD training providers varies enormously. The current market abounds with fast and cheap CPD and not quality. To permit these providers to deliver the mandatory three (3) hours compliance training would defeat the desired outcomes and, therefore, be a pointless activity.

It has been suggested that franchise groups would be classified as an industry body. As an industry body, the franchisor partners with an RTO who would then deliver the first three (3) hours of compliance training. The Institute is opposed to this as it is a means of permitting inconsistent and poor quality training providers a back door into the market and, once again, would defeat the desired outcomes.

The Institute suggests that the classification of an industry body be as follows:

*Industry body means an entity that:*

- a) is membership-based;*
- b) members are either licensees or registered persons as those terms are defined in the Property, Stock and Business Agents Act 2002;*
- c) members are required to comply with rules of membership;*
- d) is a not-for-profit or co-operative;*
- e) is governed by an elected board of members;*
- f) provides agency support services;*
- g) has a constitution that provides for the advancement of the profession for both practitioners and their clients; and*
- h) is a member of the Real Estate Reference Group established by Minister Dominello.*

The Institute views this reform as one of the most critical reforms in the Paper. If it is implemented correctly a great deal of the issues that attract the attention of Fair Trading and aggravate consumers will be remedied.

The Institute, subject to the comments above, supports this proposed reform.

## **2.8 Elective topics may be delivered by RTOs**

The Institute recognises the value of practitioners having the ability to pursue training in their specific area of practice. However, the Institute remains concerned that the quality of that training may not support the desired outcomes of the Paper. The Institute recommends a strengthening of the CPD guidelines and a requirement that CPD providers for this area of mandatory training supply their training material and means of delivery to the Industry/Government Panel as proposed by paragraph 2.6.

The Institute, subject to the above comments, supports this proposed reform.

## **2.9 Require entities providing training to submit details of training to Fair Trading**

This reform has been discussed at paragraph 2.8.

The Institute holds the view that the training material should be referred to the RERG as this body has both regulator and industry input.

The Institute, subject to the comments above, supports this proposed reform.

## **2.10 Define 'industry group' to mean an entity that an industry association or an entity that has been approved by the Minister to provide the compulsory CPD topics**

This reform has been discussed above at paragraph 2.7. The Institute holds the strong view that industry associations are uniquely positioned to deliver the three (3) hours mandatory compliance training. The words "or an entity that has been approved by the Minister" is very uncertain and is open to wide interpretation. The Institute recommends that other CPD providers must satisfy the criteria set out in paragraph 2.7.

The Institute seeks additional information in relation to this proposed reform and, accordingly, withholds its support pending receipt of an adequate response to the concerns set out above.

## **Part 3 – Conduct and Accountability**

### **3.1 Require licensees to provide an annual update to clients regarding fees, charges, commissions and other relevant information regarding ongoing agreements**

The Institute notes that the agency agreement (contract) sets out the relationship between the agent and the principal. The fees, charges, commissions and other relevant information are clearly set out in the agency agreement, which includes prescribed terms. In these circumstances, the Institute sees minimal consumer outcomes from providing a document annually that replicates the matters clearly set out in the agency agreement.

### **3.2 Prohibit agents receiving gifts or other benefits, unless these are below a prescribed amount (i.e. \$60.00)**

The Institute supports the prohibition of secret commissions and believes strongly in a transparent relationship between agent and principal.

There are, however, small commissions that an agent can earn for providing an additional and valuable service to parties to the transaction. Examples include commissions for utilities

connections and insurance. These commissions would not individually exceed \$60.00. The Institute, however, recommends that the prescribed amount be set at \$100.00 to remove any possibility of an accidental breach of this obligation. The Institute also recommends that a periodic review be undertaken to ensure the dollar amount prescribed reflects the current market.

As an additional safeguard, the Institute recommends that the agency agreement set out the commission opportunities the agent has and the likely individual amounts that are potentially available.

It is also worthy of note that agents offer to perform many functions outside of the contracted services for which they do not receive any commission. The Institute is currently in negotiations with Services N.S.W to build a system that will enable the agent, with the instructions of the relevant party, to advise Services N.S.W of that party's new address so records can be amended. This is a pure service for which the agents receive no financial reward.

The Institute supports this proposed reform, subject to the comments set out above.

### **3.3 Require specific dollar disclosure of any commissions or training services received**

The Institute supports this proposed reform and re-states its comments above in paragraph 3.2.

### **3.4 Require licensees to obtain a minimum of three quotes when cost of goods or services is more than \$2,000.00**

Conceptually this reform is meritorious, however, it is problematic in practice. The Institute recommends that the policy outcome be referred to the RERG for review and advice in regards to alternative means of achieving the desired outcomes.

### **3.5 Codify the fiduciary duty owed by licensees to their clients**

This reform lacks the detail required to provide meaningful comment. The Institute recommends the issue be referred to the RERG for further consideration.

### **3.6 Explore measures to provide greater transparency on fees and charges**

The Institute supports transparency between the agent and principal. However, this proposed reform does not have sufficient detail to enable meaningful comment.

It should be noted that agents' fees are completely negotiable.

Relevant to this discussion is the agency agreement where the entire relationship between the parties is set out in a document containing prescribed terms. If that document can be amended to assist with providing additional transparency, then the Institute would welcome the opportunity to participate in that discussion.

This reform should, in the Institute's opinion, be explored further by the RERG.

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

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

The Institute has lobbied government for over ten years for a definition of a "material fact". Accordingly, this proposed reform is welcomed and supported.

This proposed reform would, however, benefit from some additional clarity. For example, what constitutes a "serious violent crime"?

The Institute supports this reform however suggests that the detail be referred to the RERG.

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

The Institute supports this proposed reform.

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

The Institute provides no comment in relation to this proposed reform.

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

The Institute supports this proposed reform and suggests that the RERG should investigate the issue further and, if possible, design and provide the tools to assist agents with this requirement.



If the procedures adopt best practice and can be standardised then, in the opinion of the Institute, this will deliver the best consumer outcomes.

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

The Institute supports this proposed reform.

## **Part 4 – Audit Processes**

**4.1 Require agents to transfer rental income (less authorised expenses) to landlords at the end of each month unless specifically instructed not to do so by their client**

The Institute supports this proposed reform.

**4.2 Agents will have to hold separate trust accounts for rent and sales money**

The Institute supports this proposed reform.

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

The Institute supports this proposed reform.

**4.4 Establish an online portal for lodgement of audits**

The Institute supports this proposed reform.

## **Part 5 – Disciplinary Powers**

**5.1 Introduce a power to temporarily suspend a licence or a certificate of registration while an investigation is underway**

In criminal proceedings there is a presumption that a person is innocent until proven guilty and are, accordingly, treated as innocent with all of their rights intact. Despite this principle, there are circumstances where a person charged with an offence is considered to pose a significant risk and, in those circumstances, they can be incarcerated. Merely alleging that a person poses a risk is not sufficient; there must be evidence in support.

The Institute holds the view that the removal of a person's license or certificate is, and must be, recognised as a very serious decision. Accordingly, the Institute suggests that Fair Trading must demonstrate immediate and substantial consumer harm prior to the suspension of the licence or certificate. It would be of value moving forward with this reform for the RERG to consider the issue fully and build appropriate procedures and protections.

Subject to the above, the Institute supports this proposed reform.

### **5.2 Introduce a power to immediately cancel a licence or a certificate of registration that was obtained using false particulars or that has been issued in error**

The Institute supports this proposed reform.

### **5.3 Introduce a power to suspend a licence for failure to submit an audit**

The Institute views the suspension of a licence as a very severe penalty and should be warranted only in the most serious cases. In the Institute's view, a failure to submit an audit is potentially a clerical oversight. In the alternative, however, if the licensee fails to submit an audit after being requested to do so then that is potentially a different consideration and a suspension of licence may be warranted.

The Institute requires more information before it is able to comment on this proposed reform.

## **Conclusion**

The Institute considers the proposed reforms contained in the Paper as an important first step in remedying the education and training regime implemented in September 2002.

The property industry is the biggest and most important area of the New South Wales economy for a variety of reasons. It has economic and social significance to everyone.

Property transactions always involve an asset of significant value. Property transactions are also legally complex. Professionals in the property services industry must, therefore, be competent and experienced across numerous aspects of the transaction and related issues. Those who designed the current education and training regime have, in the view of the Institute, demonstrated their ignorance of the property services industry and consumer's expectations from service providers.

In the Institute's view, the next important step to improve regulatory compliance and promote professional conduct is co-regulation. Within a co-regulatory environment, industry and the regulator work cooperatively together to deliver improved consumer outcomes. The Institute invites Fair Trading

to investigate and take guidance from other co-regulated industries and significant benefits enjoyed due to that relationship.

The Institute has resolved to make an application for recognition under the legislation administered by the Professional Standards Authority. This decision is of significant importance to paragraph 2.7 above. One of the many requirements for a successful application and maintenance of a scheme is risk minimization. One key strategy to manage risk is continuing occupational education. Accordingly the Institute along with Fair Trading will need to have significant input in this issue.

The Institute congratulates Minister Dominello for initially identifying the issues within the property services sector and his unwavering determination to remedy issues within the industry that exposes consumers to risk.

The Institute thank Fair Trading for the opportunity to provide this submission and is available to provide additional input if that would be of assistance. The Institute looks forward to reviewing the draft legislation that will activate the proposed reforms contained in the Paper.

Yours sincerely,



**Tim McKibbin**  
Chief Executive Officer  
The Real Estate Institute of New South Wales Limited