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Policy and Legislation Branch

Consumer Affairs Victoria

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I wish to make a submission in response to the request for public submissions to specific questions that have arisen from the current legislation governing property law matters. I believe that I am in a unique position to comment because:

1. I was a teacher and lecturer at RMIT for 14 years teaching Estate Agency Practice to Estate Agents Representatives and prospective Estate Agents. I taught all subjects except accounting units.
2. I taught Business Law at RMIT to Accounting, Finance Students and prospective Conveyancers at the same time. In addition I also taught Property Law at Victoria University and have presented papers at International Conferences on Property matters.
3. I am a Legal Practitioner and practice part-time.
4. I am an estate agent and have been practicing for 40 years. This includes working as a sales representative, and being the Officer in Effective Control in my own business. I also controlled an active property management and sales division which I managed on a day to day basis.
5. My qualifications are: Master of Business (Property), Graduate Diploma of Law, Bachelor of Laws and Certificate IV in Teaching and Learning.

My submission is in response to the questions raised and the Question are in Bold:

Questions 1

1. **Is the definition of an estate agent easy to understand and apply? How could it be improved?**

The definition is easy to understand and apply.

2. **What problems have you experienced with unlicensed people who offer marketing or similar services to sellers or who run introduction or vetting services?**

Non-Licensed persons offering real estate services are always present in the market place it is hard to know who they are. Some pose as developers or their sales persons. Perhaps an Identification card should be issued showing Licence numbers etc.

1. **Are there any persons or organisations that are inadvertently captured by or excluded from the need to be licensed as an estate agent?**

Owners Corporations and their employees are not captured by the Estate Agents Act. They require their own Act similar to the Estate Agents Act and are in need of greater regulation. I understand that the role of the Owners Corporation is different from that of an Estate Agent, so applicable legislation should be made for Owners Corporations, Estate Agents and Conveyancers.

Developers should be required to employ Licensed Estate Agents to sell their property and be specifically prohibited from using their own often unqualified staff to market their own developments. Many legal problems are presenting with off the plan sales of apartments made by untrained and disappearing sales staff.

An individual person is permitted to market and sell their own property and this right will and should remain the case.

1. **Is the definition of conveyancing work sufficiently broad to capture all those who should be licensed? If not, how could it be amended?**

Conveyancers licencing procedures should be aligned in their own Act with Estate Agents legislation and Legal Practitioners.

1. **Is the definition of conveyancing work sufficiently broad to capture all those who should be licensed? If not, how could it be amended**

Should be aligned with Estate Agents Legislation and Legal Practitioners.

1. **What is your view as to the present training for estate agents and/or conveyancers? Are there any additional training requirements that should be mandated? Are any of the current requirements unnecessary?**

The present training for estate agents and conveyancers is well below standard. Suitable courses should gradually be elevated to diploma and/or a university degree.

Today’s graduates in Estate Agency and Conveyancers do not achieve a proper educational level and hence their understanding of their responsibilities in today’s modern world are abysmal. Estate Agents and Conveyancers handle huge amounts of public money and are responsible for the completion of important legal documents and they are not adequately trained to meet these challenges.

I estimate that I have taught over 3000 Agents Representatives and Estate Agents and my observation is that they are poorly trained and not equipped to handle modern day estate agency problems. I did not teach any Accountancy units for estate agents courses but it is a mystery to me how most of these graduating students for Estate Agency passed their tests in accountancy. I have had contact with many students, licensed estate agents and many have no understanding of trust accounting practices and how important it is to control their businesses. I know that industry software packages will assist operators in the property industry to meet their statutory requirements for trust accounts but there appears to me a lack of basic understanding and professionalism with regard to accounting methodology.

Courses in estate agency and conveyancing do not meet educational standards required in this modern world. Why have legislation if any person can become licensed who has not met acceptable standards.

By way of another comment approximately ten years ago I also taught Valuations at Swinburne and the course material was so outdated it caused students to completely lose interest in the subject. Course materials for students should only be written by Industry professionals. They need to meet the legislative requirements and address modern day concepts of property law situations that operators are confronted with in today’s work force.

All Estate Agency qualifications and training for conveyancers should be delivered at TAFE and/or Universities **only**. Estate Agents, Conveyancers and Owners Corporations Managers should have a proper education in their field so that the public can be confident that they are dealing with a knowledgeable and ethical property professional.

These courses should be funded and resourced to enforce standards. Police checks should be enforced especially for Owners Corporations Managers and staff.

1. **What are the potential costs of mandating higher entry standards for estate agents and/or conveyancers**?

There is no doubt that there will be costs involved in mandating higher educational standards but this is necessary because the public needs it and society expects it to meet high standards of behaviour and expertise. Also within the industry individual Estate Agents, Conveyancers and Owners Corporations Managers deal with huge amounts of money daily. In addition the law requires statutory compliance and the present day courses offered do not achieve knowledge of these standards. Students graduating in Estate Agency Practice and Conveyancing are not equipped to start a business. The education standards are too low.

Question 8

**What are your views on the value and efficiency of the work experience requirements for conveyancers and estate agents?**

Work experience has two problems:

1. Work experience can be very good or very poor. Work experience is not a substitute for face to face learning of an approved curriculum in an approved educational institution.
2. Employers are reluctant to provide work experience for a number of reasons and hence for organisers and co-ordinators of courses finding work placements for their students proved to be very difficult. Too many students and not enough willing employers. Work experience is very important but the question remains can an educational institution find a placement for all students?

Questions 9

**What is your view about the need for CPD for estate agents and/or conveyancers? If CPD was required, what type of training should be mandated?**

CPD requirements should be based on the requirements for Legal Practitioners with a suitable choice of subjects.

Similar requirements should be introduced for all Estate Agents, and Owners Corporation Managers. Some of topics for CPD could be offered that suit all of Estate Agents, Owners Corporation Manager and Conveyancers.

Individuals should be required to maintain CPD Register available for audit at a certain date. There should be Penalties for noncompliance with CPD requirements.

**Question 10**

**What are the costs of mandating CPD for all conveyancers and estate agents?**

There is a cost. Currently CPD’s for Legal Practitioners may cost anywhere from $65 to $100 per point. So if 10 units are required in a 12 month period the cost could be between $650 and $1000 dollars. However there are on-line seminars and flexible types of activities that can reduce this cost substantially. The REIV would be ideally equipped to deliver CPD’s along with other approved training organisations.

Question 11

**What are your views on the current eligibility criteria for estate agents and conveyancers?**

Eligibility should be tightened up and educational standards steadily raised.

Align requirements with obligations of Legal Practitioners with regard to convicted persons applying for licenses. Any right of appeal for a cancelled license should lie with VCAT not CAV.

Questions 12

**What are the factors in favour of retaining the capacity for the BLA to grant permission to someone who is otherwise ineligible to hold a licence?**

Control of licenses and disqualifications of a license should be the same as is for legal practitioners. Proper statutory requirements should be enacted so that VCAT is the final arbiter and not CAV.

Question 13

**What are your views on the information required to be provided as part of the licensing process and what are the opportunities for red tape reduction**

Align legislation where possible with Legal Practitioners, Estate Agents, Conveyancers, and Owners Corporations Managers.

**Question 14**

No comment

**Question 15**

**What would be the impact, if any, of removing the requirement for a conveyancer to obtain professional indemnity insurance as a licensing criterion and instead to prescribe it as a pre-condition for practise?**

It should be a prescribed pre-condition of starting any practice to have a minimum amount of professional indemnity insurance. Large amounts of public monies are at stake and PI Insurance should be mandatory.

**Question 16**

**What would be the impacts of mandating professional indemnity insurance for all estate agents?**

There would be a cost but this insurance is necessary. All agents, conveyancers and owners corporations’ managers who are in business should be required to hold some level of professional indemnity insurance.

Question 17

**Is it really necessary to prescribe in legislation a management approach that requires an estate agent or conveyancer to physically manage the day to day operations at each place of business? If not, what, If any, office management requirements should be prescribed?**

Attendance and supervision on a day to day basis is the only way to manage a business properly. These businesses control large sums of public monies and need regulation. This requirement also stops unlicensed persons moving into such businesses and taking control without being properly qualified. This part of the Act needs to be enforced otherwise why have any licensing regulations at all.

Question 18

**How could obligations on officers in effective control be improved to better facilitate the proper conduct of estate agency work and office procedures?**

Education to a higher standard and ongoing CPD education similar to Legal Practitioners.

The management and control of the trust accounts to meet statutory requirements need to be strictly enforced for all Estate Agents, Conveyancers and Owners Corporations Managers.

There are several other aspects of estate agency problems not being addressed for example;

1. Failure to address under-quoting and the conduct of agents who are often guilty of misleading and deceptive information. This is a difficult area to regulate and maybe only a sworn valuation can be used because forecasting final sale prices are problematic.

One has to weigh up the costs here of enforcing regulation and the cost of obtaining a valuation. In setting a reserve price an agent and vendor can compare prices with other relevant sales but this is only a guide. Many an auction I have been part of has achieved a run-away sales price which has been totally beyond my expectations even as an agent. This causes loosing buyers to be very disappointed. However it remains the vendor’s right to decide what the reserve price will be and they are entitled to change their minds on their reserve price at any time even while an auction is taking place. At the end of the day a vendor cannot be forced to sign a contract if they do not accept the price or the buyer. This is a problematic area.

1. Failure to impose mandatory reporting of auction results in the newspaper. This should be reviewed. However if a vendor does not want their sale price revealed in the public media then that is their prerogative.

**Question 18**

**What are the risks for persons licensed as estate agents in not having or not immediately replacing an ‘officer in effective control’ and should these be addressed in the Estate Agents Act**

An absence of the ‘officer in effective control’ allows for improper estate agency practice to take place. Trust monies are also placed at risk. A locum officer in effective control should be appointed after a certain number of week’s absence.

Question 19

**What options should be available to facilitate conveyancers taking a break and then re-joining the workforce?**

Same as Legal Practitioners. Conveyancers bear a real responsibility and being out of date or carrying out a conveyance improperly creates havoc and legal issues for all concerned.

Question 21

**What issues, if any, would arise if a conveyancer’s licence is cancelled if they fail to provide their annual statement and pay their annual licence fees at renewal?**

Same as Estate Agents. However if licence is cancelled because of criminal or major breaches of the Estate Agents Act/Regulations then the licence should be cancelled and an appeal to VCAT. VCAT should be the arbiter and the person with the cancelled licence should be afforded the due legal process.

Question 22

**What would be the merits or otherwise in having some established principles about the role of estate agents in the Estate Agents Act and/or setting out the duties for the conduct of an estate agent in relation to sellers, buyers, landlords and tenants (i.e. would it clarify expectations about the role of the agent and their conduct)?**

Further industry consultation required. All persons working in the industry should be qualified with appropriate certificates displayed at the front of the registered office.

Questions 23

**What additional information should be included in the Estate Agents Act about the role estate agents play in property management, including in respect of their duties and obligations to landlords and tenants?**

Same as Question 22

**Question 24**

**What sanctions should be in place for estate agents who display poor behaviour in the property management space (for example specific offences, limited licence)?**

The agent should be made to enter into a written undertakings not to display this poor behaviour again.

Should a failure to adhere to their undertaking occur then they should be prosecuted under legislation eg Anti-discrimination Acts. It is no good having legislation and not enforcing this. Prosecution also operates as a warning to other agents and public prosecutions should be made public by way of a newsletter.

The imposition of fines for varies misdemeanours is also important and these need to be clearly set out in the Act and Regulations.

Question 25

**What are your views on the merits of clarifying and directly expressing in the Estate Agents Act the duties and obligations, if any, that an estate agent may hold towards buyers of property?**

Same as Question 23

Question 26

**What would be the costs and benefits of regulating the conduct of estate agents in negotiating sales authorities and the content of those authorities?**

There is too much paperwork now and authorities need to be reviewed and updated by industry specialists.

Question 27

**What are your views on the current level of information disclosed by an estate agent to a client about commission, fees, rebates and other outgoings?**

A review would be helpful. Rebates cause troubles when signing up a vendor. Some do not know what they are, others demand that they be paid to them or the commission reduced.

**Question 28**

**What is your view of the appropriate consequence if an estate agent fails to meet the disclosure requirements? For example, should the estate agent be entitled to any commission or other moneys?**

The vendor or landlord needs to know exactly what commission and/or fees are being paid by them to the agent. A failure to have in place a written agreement for commission or a fee should mean that no commission or fee is payable to the agent by the vendor.

**Question 29**

Any fee sharing with another agent is the business of the listing agent and nothing to do with the vendor**.**

Question 30

**When should an estate agent disclose details of a person entitled to a commission? If the commission-sharing relationship arrangements change, what requirements of disclosure should apply?**

The agent should hold a document of how much commission is payable to the agent upon sale of the property. Any person who is able to share this commission is irrelevant and creates more problems than it purports to solve. Also how can this be enforced. Commission sharing payments, referral fees for referring business are in all industries.

Question 31

**What safeguards should be in place in circumstances where an estate agent or their representative or relative gains an interest in a property the agent is selling?**

Disclosure to the vendor and a cooling off period of say 7 days with a referral to the vendor’s solicitor documented on the file.

**Question 32**

**What distinction, if any, should there be between the estate agent personally buying a property, or their representatives or relatives buying a property that is listed with the agency?**

Any relative or estate agent (Section 55) who is buying a property listed for sale by the agent should notify the vendor in writing of their interest in the property. When the sale documents are signed there should be a 7 day cooling off period and the vendor should be advised in writing that they should consult their solicitor.

Maybe it should be considered that a mandatory valuation of the property should be carried out and that the sale price not be below this figure. The present Section 55 of the Act does not always ensure that vendors receive the highest price for their property.

Questions 33 & 34

**Are there any circumstances where rebates could be permitted (for example, with appropriate disclosure requirements)?**

**What appropriate remedies or alternative approaches to prohibiting rebates could be considered?**

**Do the current arrangements in the Estate Agents Act sufficiently deal with rebates? In particular, should indirect benefits be included, and if so how these should be accounted for?**

Ideally any rebate or benefit should be disclosed to the vendor or landlord but how is it enforced. Payments for referring business to a third party are common place and have been illegal in the real estate industry for decades but they persist. Currently most Banks offer cash to estate agents for referring borrowers but it is never paid immediately usually long after settlement. Agents have sometimes been afforded a first class air ticket to reward them for the business channelled their way and this does not directly pertain to any vendor. How do you solve this issue? Estate Agents who refer clients to conveyancers often receive $200

Questions 36, 37, 38

**Do the current professional conduct rules for conveyancers deal sufficiently with matters conveyancers should observe in the conduct of their functions?**

**Are there changes or additions to the rules that should be considered? Should the rules align with relevant rules for legal practitioners wherever practicable?**

**What regulation, if any, is required to deal with circumstances where a conveyancer is asked to pay, or offers to pay, a commission to a third party who refers a client to the conveyancer?**

Professional Conduct Regulations should align with legal practitioners and estate agents wherever practicable.

It will be very difficult to enforce no referral fees for conveyancers as estate agents often make the referrals and they expect and obtain referral fees. It would seem unfair if conveyancers are entitled to receive rebates or pay rebates.

Question 39.

**Are the current costs disclosure provisions in the Conveyancers Act sufficient? If not, in what respect should they be amended? Should the costs disclosure required for conveyancers align with those for legal practitioners?**

Same as Legal Practitioners and Estate Agents

Question 40

**Are the current costs disclosure provisions in the Conveyancers Act sufficient? If not, in what respect should they be amended? Should the costs disclosure required for conveyancers align with those for legal practitioners?**

Align with Legal Practitioners and/or Estate Agents where possible

Questions 40, 41, 42, 43

**What are your views about, and experience of, the current VCAT inquiry system? What are the opportunities to improve the VCAT process**?

OK – time delays are not good

**Are the range of orders and penalties open to VCAT after conducting an inquiry sufficient and appropriate? If they are not, what changes would you recommend and why?**

**What are the merits of the proposed approaches which could operate in conjunction with existing enforcements approaches?**

**What additional suggestions do you have to address poor conduct?**

Same procedures should apply as Legal Practitioners and Estate Agents.

Conveyances, estate agents and body corporation’s managers should all be subject to uniform laws and penalties because vast sums of the public monies are at stake.

**Question 45 - Trust monies**

**What are your views on the overall effectiveness of the trust accounting requirements for estate agents and conveyancers?**

The Trust Accounting requirements for Estate Agents and Conveyancers need to be reviewed.

The training received by Estate Agents and Conveyancers do not equip them to meet and understand trust accounting requirements Many agents simply do not understand the importance of proper accounting procedures for their businesses. The current Trust Accounting requirements for an estate agent and conveyancers should be tightened up and instead of an annual audit a quarterly audit should be introduced. Modern software for estate agents trust accounts allows for a daily balancing of these accounts. Quarterly auditing will protect the public and minimise the extent of any fraud.

A failure to lodge a quarterly audit certificate by a certain date should result in an automatic suspension of the licence and trigger an investigation. It is time that CAV and the law made sure that the public are being protected. Estate Agents and Conveyancers are handling huge amounts of public monies and as fraud is on the increase it is the duty of the authorities to limit the amount of damage that can happen. Estate Agents and Conveyancers should be required to consult with an auditor quarterly so that an audit can be carried out and a Certificate of Compliance Issued. Then the agent can sign off with confidence. With modern software and the knowledge that the auditor must issue a Certificate of Compliance quarterly the costs should not be significant and the advantages clearly outweigh the cost.

**Question 46 & 47**

Estate Agents and Conveyancers should continue with the present arrangements for dealing with deposit monies. Controlled money accounts should not be allowed. Use and control of Trust accounts is paramount here.

**Question 48 – Sanctions for operators who don’t comply with auditing requirements.**

Legislation and regulations that are breached in this area should bear the full brunt of the law and licenses should be suspended and cancelled. A suitable penalty regime should be introduced as a deterrent so that operators comply.

**Question 49 - Offences relating to trust accounts deficiencies**

It is no good having penalties if they are not enforced. The public should also be informed about serious breaches of trust accounting regulations and loss of public monies.

Estate Agents and Conveyancers who run trust accounts should be notified on the public register as is now the case with Legal Practitioners for example ‘’Principal with Trust”. Regular inspections of Trust Accounts should be carried out if quarterly audits are not introduced. Offences relating to trust accounts should align with Legal Practitioners.

**Question 50 –Records**

Aligned with Legal Practitioners but maybe less time for estate agents and owners corporation’s managers.

**Questions 51 & 52**

Yes I do access the public register. I used it when I was employing staff. It also plays a role in keeping unlicensed persons from pretending to be estate agents or conveyancers.

Yes ineligible persons should continue to be listed.

**Question 53- Display of Licenses**

If you have a licence it should be displayed prominently. All persons working in an agency or for a conveyancer should be licensed and their Certificates displayed.

**Question 54 -**

Yes they are clear. Any dealings I have had with this office have been positive.

**Question 55 & 56**

Role of the Director is clear. The powers given are relevant but the office is under- resourced and inspectors for auditing insufficient.

**Question 58**

Should be aligned with legal practitioners and the basis for compensation claims for the VPF need reviewing. Naturally the calls on this fund would be greatly reduced with PI Insurance.

**Question 59**

Monies from VPF should be paid to approve tertiary Institutions for the funding of educational courses suited for the particular property sector. The aim should be to develop appropriate courses that have uniform standards and that are tested by public examinations and coursework. Only TAFE and University courses should be able to run these courses so that the cowboys awarding current Certificates are excluded from handing out these qualifications.

**Question 60**

An unlicensed person who has received a commission should be obliged to repay this commission to the vendor and a substantial fine paid by them to the VPF. The difficulty with enforcing this provision is that it could be paid as a rebate or referral fee months later or paid in cash.

**Question 61**

The purpose of the Estate Agents Act is to control and regulate the real estate industry and all operators who work in the industry. Any deregulation or watering down of the statutory requirements would be most unwise.

**Part B – Conduct of Owners corporation managers.**

General Comment

It is a gross oversight that these *Owners Corporation Managers* are not subject to the same statutory obligations and regulations as estate agents.

Where there is money involved there will always be frauds and dishonest persons taking advantage of the situation. The public are not protected and their recourse to justice and fair play are seriously undermined by the present situation. Often owners are unable to obtain the required documentation. The Owner maybe rendered powerless and unable to receive the required knowledge they seek to obtain or execute fairness and justice.

My first -hand knowledge of this industry is that there is wide-spread corruption, underhand payments and rorting going on and no one cares. Since Owners Corporations have proliferated with the building of multi-story complexes the industry has increased enormously and it is inadequately regulated.

Stricter regulation of Owners Corporation Managers is well overdue.

**CONCLUSION**

Estate Agents, Conveyancers and Owners Corporation Managers should be subject to more or less the same requirements as Legal Practitioners. In some cases the legislation may not be practicable to do this but where possible it should align.

Standards of education and training need to be addressed seriously if the standards in these industries are to be improved. The present courses need reviewing and updating. When the course materials are being written and updated only persons with proper and practical industry knowledge should be used.

Standing in front of students teaching outdated information and using poor quality notes does not improve the quality of education nor does it give the student a sense of confidence in his/her training. Without adequate training students cannot and should not be allowed to graduate as estate agents and agents representatives, conveyancers and owners corporation managers.

There should be reasonable entry requirements offered for initial agent’s representatives and property managers, conveyancers, and owner’s corporation managers but they must be of a sufficient standard that enable staff to operate in the industry effectively.

Then various levels of achievement should be recognised with Certificates so that it is possible for example to distinguish say a junior property manager from a senior property manager. The standards for qualifications should be improved and the teaching of trust accounting requirements properly addressed and taught for Estate Agents, Conveyancers and Owners Corporations Managers. If you are unable to pass the Accounting units and legal units you should not be allowed to graduate.

I have taught over 3000 estate agents over 14 years and have an in depth knowledge of this topic from teaching and have had practical experience in the office and field. I would be happy to make a further contribution in any way.

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