

Submission about the **Regulatory Impact Statement, Estate Agents (Education) Regulations 2020**

As Commissioner for Residential Tenancies I welcome the opportunity to make a submission in regard to the Regulatory Impact Statement (the RIS) for the proposed Estate Agents (Education) Regulations 2020 - Exposure Draft (the Regulations).

My role is to provide independent advice to the Victorian Government about renting laws, programs and services to improve the lived experience of renters across Victoria.

My interest in the Regulations relates to residential property management and my observations are directed accordingly.

I welcome the further development of training requirements proposed by the Regulations. I agree with the principle that effective training of estate agents and their representatives is a necessary condition for the suitable protection of renters and landlords. Competent property management is also a crucial factor in improving the overall experience of renters across Victoria.

Whilst the Regulations provide a necessary condition for improvement in the competency of agents and representatives, I remain concerned about the other actions that are needed to improve property management practice.

In particular I believe that the effect of the proposed regulations would be enhanced by the following measures:

Exemptions, RPL and continuing professional development

The exemptions from the training requirements and the recognition of prior learning in the proposed Regulations are too generous and arbitrary. For example, it appears that an agent's representative who passed the course more than 10 years ago and worked as an agent's representative more than 9 years ago would be considered to have passed the training requirements or be exempt. Skill and knowledge retention is unlikely to survive that period and there may have been significant change in the substantive content.

The training requirements are essentially established in relation to commencement of employment and provide no obligation for continuing professional development to ensure that skills and knowledge remain relevant and current. The proposed exemptions and recognition of prior learning exacerbate this gap. For example, under R. 9(d) a person would be exempt from the training requirements if they had worked in the industry in 1990 and were employed at any time within the last 10 years as an agent's representative. The implication of this exemption is that industry experience alone is enough to guarantee competence, which undermines the primary objective of the Regulations.

Recommendations:

1. The exemptions and recognition for prior learning in the Regulations should be restricted or removed.
2. Assessments of competency should be made by the RTOs responsible for the training provision as they are best placed to determine whether the person's previous qualifications and industry experience are sufficient to demonstrate competency with the current requirements.

3. Introduce an industry-wide system of continuing professional development to ensure that all estate agents and agent's representatives maintain an appropriate level of competence at all times.

Mutual recognition with other Australian jurisdictions

The practice of mutual recognition of estate agents could be used to circumvent the training requirements proposed by the Regulations particularly if the standards required for qualification in another jurisdiction fall below the standards now required in Victoria. It would be damaging to the confidence of consumers and industry if the education requirements in Victoria could be circumvented by sub-standard courses in other jurisdictions. This is particularly problematic given that estate agents have a supervisory role over their representatives.

Recommendation:

4. The practice of mutual recognition of estate agents who have qualified overseas, or interstate must be reviewed to ensure that the relevant qualification standards are met by anyone practicing in Victoria.

Training to remedy poor practice

The Director of Consumer Affairs Victoria (the Director) should be able to require an estate agent or an agent's representative to undertake training consistent with the qualifications in the Regulations. This may currently be possible as part of a VCAT-ordered licence condition for inquiries established under sections 25 and 28 of the principal Act. However, such inquiries are only likely to be initiated where there are serious breaches of the principal Act or the Regulations. This does not address the situation where more minor problems and breaches are identified during the routine monitoring or auditing conducted by authorised inspectors of the Director and which may be addressed by retraining.

Recommendation:

5. The principal Act should be amended to empower the Director to require an estate agent or agent's representative to undertake training in a relevant subject prescribed by the Regulations in response to practice breaches as an intermediate action prior to any disciplinary proceedings.

I appreciate that a number of these measures are outside the scope of the current RIS but believe it is important to record how these measures would provide a more integrated framework for improving property management practice.

In general, I am supportive of the incremental increase in the training requirements proposed in the Regulations and understand the balance that the RIS has sought to achieve between improving estate agency practice through training and education whilst not creating unnecessary barriers to new entrants and employment in the real estate sector.

Should you wish to clarify anything in the above submission please do not hesitate to contact my Strategic Adviser, Mark O'Brien on [REDACTED]

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Commissioner for Residential Tenancies
9 September 2020