

Submission
A response to
The Regulatory Impact Statement for the proposed
Estate Agents (Education) Regulations 2020
Promulgated by the
Department of Justice and Community Safety, Victoria

Submitted by:

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A. Forward

I thank the State Government of Victoria for the opportunity to comment on the [Regulatory Impact Statement \(RIS\)](#) regarding the proposed Estate Agents (Education) Regulations 2020.

I shall be responding to the RIS under the following sub and sub-subheadings, *from the perspective of a single male, 66 yoa, destined to living in private rental accommodation as a tenant for the foreseeable future*, i.e. the next ten years:

- 1.1 Background
 - 1.2 Problem analysis
 - 1.3 Objectives
 - 1.8 Consultation
 - 2.2 Real estate services industry: regulation and imperfect market
 - 4.2.1 Costa associated with a poor industry reputation
 - 4.2.2 Risks to vulnerable tenants from substandard estate agents and agents' representatives
 - 4.2.3 Disputes between consumers and agents
 - 10. Implementation plan
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B. Preamble

The overview to the RIS includes the following:

The proposed education requirements reflect significant changes to **standards** of competency for estate agents and agents' representatives.

The 'Objectives' section includes the following:

1. To ensure that the training undertaken by estate agents and agents' representatives equips them with the necessary **skills** to perform their duties **competently** and render services with the expected level of **due care and skill**. This objective will assist in:
 - o improving the **reputation** of the real estate industry
 - o reducing risks to vulnerable tenants, and
 - o reducing disputes between consumers and agents.

Highlighted text in **yellow** stresses a particular point.

1. Comment:

I have experience as the purchaser of a property only once- in 1985. Ownership rights were relinquished in 2014.

I lived as a tenant between 1981 and 1985 and have again, since late 2013. Nearly all rental premises I lived in were managed by estate agents or agent's representatives working for large and long-established businesses.

My circumstances nowadays mean I will continue to live in rental accommodation for some time. My current finances enable me to purchase a small property as an owner-occupier but I choose not to. I have been on the receiving end of some interesting, read *condescending*, moments from people supposedly working as professional estate agents or agent's representatives and so-called property managers; the experiences have left an indelible and long-lasting legacy on my psyche.

1.1 Summary:

From my experience, it's often under 30 year olds, and inexperienced, agency staff that are given property manager portfolios, yet who have significant responsibility vetting a tenant's application and consequently determining their fate. The degree of finesse and professionalism they bring to their task depends a lot on the oversight of their employer and its supervisory structure. What is its 'culture'? Is it, 'This is how we do things here; tenants are more or less cowed because they need the property and so will keep quiet and not complain. You'll be right.'

At least that's one community perception!

With so many of Australia's political and business leaders apparently failing the proverbial but mysteriously undefined pub test as regards ethics of conduct in public office and the highest standards of responsible fiduciary acumen and probity in business governance, estate agents too face a myriad of temptations that challenge their profession and manner of personal conduct. It's tempting to compromise on diligence; give in to a bit of complacency. The terms are many, the slippery slope, gradual at first.

'Standards' sounds well-intentioned but I hope it's augmented with a study in ethics.

It seems almost an inevitably hopeless exercise but I will do my best to refute and debunk an oft-quoted and alleged truism that even I fall victim to in believing:

The terms are mutually exclusive.

C. My responses to the RIS

1.1 Background

I agree with the aims and manner in which the Department of Justice and Community Safety has undertaken the excersize, to have estate agents better qualified.

1.2 Problem analysis

I agree with the arguments put forward in this subsection: the real estate services sector should not be involved in the training of agents who eventually hope to find employment in the sector.

It's a bit like a business self-auditing or a police force or political party self-investigating their internal methodologies, especially after a scandal has broken out. It never seems quite convincing or credible.

1.3 Objectives

Regardless of which options are chosen for estate agent's and agent's representative courses, they should include a module about working ethically.

1.8 Consultation

It's appropriate that the industry's representative body, the Real Estate Institute of Victoria (REIV) was consulted regarding what units should be included.

In 2014 I selected Kangan Institute of TAFE Essendon as the preferred RTO where I ended up studying a Cert.III in Health Services Assistance. I chose Kangan because, at the pre-course information session, an instructor stressed that modules in Kangan's courses were tailored to what hospitals and medical entities were looking for as minimum qualifications for graduates when they later applied for positions.

A media article appearing on the internet in October, 2019- ['Real estate agent licensing requirements in Victoria'](#), mentions professional conduct obligations. The fourth, fifth, seventh and eighth dot points are noteworthy:

- Follow all instruction by your clients, as long as they are lawful and do not go against good estate agency practice.
- Always act in their client's best interest, except when it is unlawful, unreasonable, improper or against a client's instructions.
- Act fairly, honestly and to the best of their knowledge and ability.
- Exercise skill, care and diligence.

All I can say is, all very well and good and I'd expect to see these sentiments incorporated into any training package- they're already embedded in the Estate Agents (Professional Conduct) Regulations 2008. In my experience over recent years, it's actually been me who seemed to have better 'knowledge and ability' and ended up telling the agent's representatives how to do their job- always with respect; with courtesy; not usually a comfortable moment.

2.2 Real estate services industry: regulation and imperfect market

I have had to use a tenant's type of advocacy service three times since 2014:

2.2.1

Soon after moving into my current premises, in which I have now lived for over six years, I used a Consumer Affairs Victoria (CAV) form RT 25 (9/13) '*Notice to landlord of rented premises,*' to serve on the property manager so that six items I deemed sufficiently defective on account of personal health, safety and/or enjoyment of the premise could be attended to;

2.2.2

In 2015, I used the services of the Tenants Union of Victoria (TUV) and [Housing for the Aged Action Group](#) (HAAG), of which I am a member, to advise me on how to get window locks, of the type requiring a key, installed in my premises.

Using a mix of their advice and my intuition, I submitted to the property manager a request for the installation of window locks- and was refused. I then purchased locks and installed them. No drilling or modification was required because of due diligence used in selecting the most suitable locks; they can be removed at any time without leaving a mark or trace.

I then presented to the property manager the receipt and details on how I had installed the locks, and requested reimbursement of costs. The manager relented, though reluctantly; I received full payment but was sternly advised that in future I must not carry out modifications without consent.

Shortly after this episode, I made a [submission](#) to the Victorian Government as it was conducting a review of the Residential Tenancies Act 1997 and I considered I had a story to share. The Act's section 70- 'Locks' appears to have been modified so as to clarify the description: a lock being a device often requiring an additional 'thing' to operate it so it can't be unlocked/opened ...

4.2.1 Costa associated with a poor industry reputation

I'm pleased to see the term 'ethical' finally make an appearance.

I concur with the arguments presented, notably the first three paragraphs, as I can see their application in the world of managing a rental property.

Maybe one day we'll see the estate agent added to the [list of authorised statutory declaration witnesses](#).

4.2.3 Disputes between consumers and agents

My unit sits within an estate created in the mid-2000s by a large residential investment and development business. There are roughly 60 units incorporating one, two or three bedroom; some units provide a LUG. In 2020, it's easy to appreciate the pretty good build quality, given the soils in Melbourne's outer north-west.

Minor irritations are- these go back to the mid-2000s when the science, of building an innovative, environmentally sustainable and energy-wise domestic dwelling was already acknowledged as a better option and encouraged by governments state and federal:

a) The buildings don't incorporate eaves or under-tile sarking;

b) The step to the outside and down to the pavement through the patio-style sliding door opening probably complied with Standards Australia as regards a maximum riser height of 190 mm when the units were designed.

Meaning, the sliding door's 50 mm high roller track containment extrusion, secured to the doorway's floor, forces the motion of passing through the doorway to include a 'raise-and-over' as well as 'swing through' ambulatory foot and leg action. The total distance between the now higher level from which the sole of a shoe has to travel down to the pavement is often in excess of 220 mm. Many property owners, as well as tenants such as me, have built a variety of improvised or more durable step platforms to prevent trip type accidents.

This is where agents and agents' representatives, often acting as property managers, fall down in their role: *their inability to assess a premises' condition as 'fit for purpose' outside and independent of the constraints of needing to know building standard. If a tenant complains about a trip hazard, better listen up and take interest.*

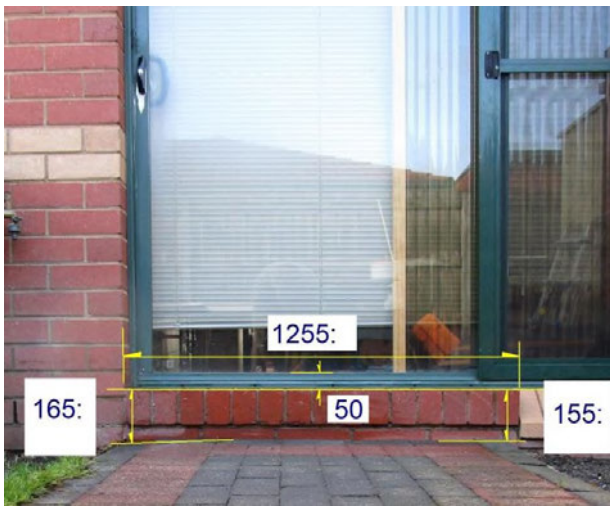


Fig. 1

Back entrance/exit.

155~165 mm step down/up appears compliant with Australian Standards but the need to step up and over the 50 mm extrusion containing the door track equals a combined height of 215 mm.

Clearly a trip hazard.



Fig. 2

Back entrance/exit.

Steps manufactured by tenant.

The majority of units were retained by the business as rental properties and it used its own in-house staff as agents and property managers to manage the properties. It was one of these managers with whom I had to 'negotiate' regarding the CAV Notice and the window locks.

I must emphasise that I never detected a hint or suggestion that retribution against me for taking the action I had was being considered; yearly lease renewals confirmed that my behaviour- and methodology (?), had been acknowledged and put aside. I, in turn, also maintained a measure of respect and consideration for the firm's staff- including my property manager.

In mid-2017 the business sold off many of its rental properties. My premises were also put on the market.

In an act motivated pretty much by common-sense, as I faced the reality I might have to move again, I introduced myself to the firm's sales agent who regularly set up office in a previously vacated and prepared unit. Each got to appreciate the other's perspective. Over the following few months towards mid-2017, I witnessed other units changing owners. My unit was eventually put up as available. I was treated respectfully and with consideration- no sweet-heart deals either. The agent demonstrated such consideration when organising 'opens'- asking when it would be okay to come by rather than 'I need your premises.' I mentioned to him that I knew the law as it applied to 'opens'; he responded by describing his modus operandi. It included the term 'respect.'

A few months later, my unit had a new owner, I was still the tenant, and my rent had ... remained the same. And would remain so for the next two and a half years! The business' head manager soon after had a letter on his desk describing a certain tenant's thanks and appreciation for how their agent had treated and advocated on his behalf as a worthy tenant, to be retained by the new owner.

Despite what other parts of my submission suggest- that I'm an easily dissatisfied tenant, I remain happy where I live. I think what has helped me achieve this state is a belief that one cannot, and must not, tar all people working in the real estate industry with the same brush. Moderate expectations and remain respectful.

10. Implementation plan

I recommend that the Proposed Regulations be implemented as soon as possible and practicable. As supporting argument, I submit personally experienced incidents, a reading of which should help add impetus to the Regulations' introduction.

D. Conclusion

Some words and thoughts I used as inspiration to draw up this submission:

Corporate culture
Ethics
Duty of care
Dilligence
Risk assessment
Initiative
Attitude
Bias, prejudice
Integrity
Codes of Conduct- so many!

What about getting landlords and tenants together? >>>

- What improvement/s would you like/should we do? Rear door step down!!!
- How are the appliances performing?- Per manufacturer's instructions/maintenance guidelines?
- How's the HWS working? The landlord never asks us to check it but it's a gas and electrical combined unit. Let's make a time to check it- Best Practice!
- It's not good enough to rely on just the tenant's 'oh it's broken/not working' report. Agents and property managers need to be pro-active in managing rental properties, as if they themselves were the owner.

E. Addendum

I offer for further consideration some case studies as a way of influencing Committees given the task of fine-tuning the training requirements.

* Case study #1 - 2014

Following the acceptance of keys to the premises (where I live currently), I took longer than the stipulated three working days to do a condition inspection. Part 2.2.1 previously describes the scenario. It would not have come to this if the property manager had done their job correctly and I submit photos depicting the condition of the property deemed 'Ticked ~ okay' (note, photos were taken at time of taking possession):



Fig. 3

Shower recess soap holder broken off, leaving jagged-ended stub covered with a band-aid.

Where was the property manager's **Duty of Care** when the bathroom and everything in it was ticked off as 'Good'!

Note: The tenant (me!) used a right-angle grinder to cut off the stub and blend and smooth the remaining tiled area.



Fig. 4

Fig. 5

The state of the sliding door's track and rollers. The dual action to move the door required both a lift and push motion- well beyond many tenants' abilities. **The door's reduced ease of operation constituted a fire escape hazard.**



Fig. 6

The poor state of cleanliness of the air conditioner unit represented a health hazard.

The tradesman contracted to clean it took over an hour. It had most likely never been cleaned since new- approx. since circa 2007.

* Case study #2 - 2019

I received a 'phone call from an unknown entity advising something about smoke alarms. I cut the caller off because of their incoherent manner of speech.

Some days later the same entity called. This time I held on for more details: My premises' smoke alarm needed attention. I shortly after also received an email from the same entity requesting I arrange for access to my premises to expedite the work.

The approach was unusual and I suspected nefarious intent. I emailed my property manager, asking if the message and topic was legitimate. The response was, it was: the smoke alarm needed attention.

I replied that *it is protocol that an agent first notifies the tenant ahead of the tenant receiving notice from any contractors regarding work to be done to the premises*, as it establishes the bone fides of the contractor and that the work is legitimate.

* Case study #3 - 2020

I had renegotiated a renewal of my lease for a further twelve months. The procedure included the agent ensuring that I received a copy of the Consumer Affairs Vic. handbook '[Renting a home: A guide for tenants.](#)'

I received it- electronically, with my consent and checked its edition date. I then compared this date with the edition available on the CAV' website. ***I discovered that the copy the agent's firm had sent me was obsolete by at least two editions.***

I regarded this as a breach and notified my property manager. I told him that he and his firm needed to ensure that any government-sourced publications given to tenants must be at the most current revision. Providing tenants with obsolete publications could render an agent, property manager or the employing firm at a disadvantage if an incident were to occur where the tenant referred to the publication provided as part of their defence or justifications for any reason.

End