

**THE REAL ESTATE INSTITUTE OF WESTERN  
AUSTRALIA (INC)**

**PART IV OF THE COMPETITION AND  
CONSUMER ACT, 2010 & AUCTION CODE  
COMPLIANCE PROGRAM**

**MANUAL**

**APPLICABLE FROM 7 JANUARY 2000  
(as most recently amended on 4 November 2011)**

**MDS Legal  
16 Irwin Street  
PERTH WA 6000  
Phone: 9325 9353 Fax: 9221 2220  
E-mail: [mds@mdslegal.com.au](mailto:mds@mdslegal.com.au)**

# REIWA PART IV OF THE COMPETITION AND CONSUMER ACT, 2010 & AUCTION CODE COMPLIANCE PROGRAM

## MANUAL

### INDEX

| <u>Item</u> | <u>Subject</u>   | <u>Page Number</u> |
|-------------|--|--------------------|
| 1.          | Introduction   |                    |
| 1.1         | REIWA Compliance   | 1                  |
| 1.2         | Australian Standard AS3806                               | 2                  |
| 1.3         | Compliance with CCA & Auction Code                       | 2                  |
| 2.          | Structural Elements                                      |                    |
| 2.1         | Commitment   | 3                  |
| 2.1.1       | The need for commitment                                  | 3                  |
| 2.1.2       | Persons to whom this manual is directed                  | 3                  |
| 2.1.3       | The need to convey a clear compliance message            | 3                  |
| 2.1.4       | The ICO and REIWA's Legal Adviser                        | 4                  |
| 2.1.5       | Approval of manual by REIWA's Legal Adviser              | 4                  |
| 2.1.6       | Queries and suggestions                                  | 4                  |
| 2.2         | Compliance policy  |                    |
| 2.2.1       | REIWA council policy                                     | 4                  |
| 2.2.2       | Objects of REIWA Compliance Program                      | 5                  |
| 2.2.3       | Continuous monitoring of the REIWA<br>Compliance Program | 5                  |
| 2.3         | Management responsibility                                |                    |
| 2.3.1       | The role of management                                   | 6                  |
| 2.3.2       | All levels of REIWA management to ensure<br>compliance   | 6                  |
| 2.4         | Resources  |                    |
| 2.4.1       | The resources provided by REIWA                          | 7                  |
| 2.5         | Continuous improvement                                   | 8                  |

|       |  |    |
|-------|--|----|
| 3.    | Guidelines for Operational Elements  |    |
| 3.1   | Identification of compliance issues  | 9  |
| 3.1.1 | Specific compliance issues   | 9  |
| 3.1.2 | The REIWA Council, the ICO, REIWA's Legal Adviser and the Competition and Consumer Act Compliance Committee  | 9  |
| 3.1.3 | Advice of amendments of Part IV of the <i>Competition and Consumer Act</i>   | 10 |
| 3.2   | Operating procedures for compliance  | 10 |
| 3.2.1 | Check-lists of individual's responsibilities   | 10 |
| 3.2.2 | Review by REIWA's Legal Adviser of documents created after the introduction of the Compliance Program  | 10 |
| 3.2.3 | (i) Review by REIWA's Legal Adviser of REIWA Arbitration and Tribunal Awards<br>(ii) Reference of disciplinary matters to the Real Estate and Business Agents Supervisory Board (ACCC Authorisation Requirement) | 11 |
| 3.2.4 | The process of the conducting of reviews by REIWA's Legal Adviser of documents   | 12 |
| 3.2.5 | Review by ICO of minutes of meetings   | 12 |
| 3.2.6 | Action plan by the ICO to deal with compliance problems  | 12 |
| 3.2.7 | Monitoring of compliance   | 14 |
| 3.2.8 | Education and training   | 14 |
| 3.2.9 | REIWA Auction Code of Conduct  | 14 |
| 3.3   | Implementation   | 15 |
| 3.3.1 | Commencement of Compliance Program   | 15 |
| 3.3.2 | Provision of copies of this manual and amendments  | 15 |
| 3.3.3 | Up-to-date copies of the manual  | 15 |
| 3.4   | Complaints handling system   | 16 |
| 3.4.1 | ICO responsible for handling complaints  | 16 |
| 3.4.2 | Process for dealing with complaints  | 16 |
| 3.5   | Record-keeping   | 18 |
| 3.5.1 | Failures log   | 18 |
| 3.5.2 | Complaints log   | 18 |
| 3.5.3 | Complaints file(s)   | 18 |
| 3.5.4 | Training programs  | 19 |
| 3.5.5 | Induction  | 19 |
| 3.5.6 | REIWA's Legal Adviser's review of rules, regulations, contracts, forms and awards  | 20 |

|        |  |    |
|--------|--|----|
| 3.5.7  | REIWA's Legal Adviser's review of compliance program and advice of legislative changes | 21 |
| 3.5.8  | Review by ICO of minutes   | 21 |
| 3.5.9  | Competition and Consumer Act Compliance Committee meetings                             | 22 |
| 3.5.10 | Summaries of REIWA's Legal Adviser's reviews, complaints and training programs         | 22 |
| 3.6    | Identification and rectification   | 23 |
| 3.6.1  | Meeting between ICO and REIWA's Legal Adviser  | 23 |
| 3.6.2  | Meetings between REIWA's Legal Adviser and senior management                           | 23 |
| 3.6.3  | ICO reporting to REIWA Council   | 24 |
| 3.6.4  | Competition and Consumer Act Compliance Committee and its reports to the REIWA Council | 24 |
| 3.6.5  | Annual Audit by REIWA's Legal Adviser of membership applications                       | 24 |
| 3.7    | Systematic and recurring problems  | 25 |
| 3.8    | Reporting  | 25 |
| 3.8.1  | REIWA to encourage reporting of breaches   | 25 |
| 3.9    | Management supervision   | 26 |
| 4.     | Guidelines for maintenance elements  |    |
| 4.1    | Education and training   | 27 |
| 4.1.1  | Training programs required to be presented by REIWA's Legal Adviser                    | 27 |
| 4.1.2  | Additional training programs   | 27 |
| 4.1.3  | Content of training programs   | 27 |
| 4.1.4  | Induction of new councillors, staff and others   | 28 |
| 4.2    | Visibility and communication   | 29 |
| 4.2.1  | Publicising of the REIWA Compliance Program  | 29 |
| 4.3    | Monitoring and assessment  | 30 |
| 4.3.1  | Methods of monitoring and assessing the REIWA Compliance Program                       | 30 |
| 4.3.2  | The Competition and Consumer Act Compliance Committee                                  | 31 |
| 4.3.3  | Matters to be emphasised in monitoring the REIWA Compliance Program                    | 32 |
| 4.4    | Review   | 33 |
| 4.4.1  | Methods of review  | 33 |
| 4.4.2  | Purpose of reviews   | 33 |
| 4.5    | Liaison  | 34 |
| 4.5.1  | Liaison by the ICO with ACCC and reporting to the ACCC                                 | 34 |
| 4.6    | Accountability   | 34 |

|       |  |    |
|-------|--|----|
| 4.6.1 | Accountability of the ICO  | 34 |
| 4.6.2 | Accountability of individual Council members,<br>Arbitrators and committee members | 34 |
| 4.6.3 | Accountability of REIWA staff and staff<br>job descriptions                        | 34 |

## 1. INTRODUCTION

### 1.1 REIWA COMPLIANCE

The Real Estate Institute of Western Australia (Inc) is committed, at all levels, to complying with the provisions of Part IV of the *Competition and Consumer Act*, 2010 (**CCA**) and all related legislation and regulations (**Part IV of the *Competition and Consumer Act***). The compliance program the subject of this manual was initially implemented pursuant to Federal Court orders made by His Honour Justice French on 8 October 1999. The term of that program was for a period of 6 years expiring on 8 October 2005. Since that time REIWA has implemented a voluntary program pursuant to the following resolution passed by the REIWA Council on 3 November 2005.

#### **Trade Practices Act Resolution of REIWA Council**

- (a) The Council of REIWA acknowledges the Institute's on-going commitment to compliance with Part IV of the *Trade Practices Act*, 1974 ("the TPA") and related legislation prohibiting anti-competitive conduct. REIWA fully supports the philosophies behind the TPA, including prevention of anti-competitive conduct.
- (b) Notwithstanding the recent expiration of the formal requirements upon REIWA imposed by the orders of His Honour Justice French in the Federal Court on 8 October 1999 to maintain a TPA Compliance Programme, REIWA recognises the desirability of continuing such a programme. As such, REIWA is committed to continuing at all levels to fully conforming with Part IV of the TPA and, to assist it with that aim, to having an effective Compliance Programme.
- (c) Further, REIWA acknowledges the importance of the Council itself taking the lead in both establishing a culture of compliance with the provisions of Part IV of the TPA within REIWA and ensuring adherence to those provisions by all of REIWA's management and staff. REIWA also appreciates the importance of providing on-going guidance and education to its members in order to promote compliance by the real estate industry with the provisions of the TPA.
- (d) As part of the implementation of the policies set out above the REIWA Council resolves to:
  - (i) continue with an active formal TPA Compliance Programme;

- (ii) direct the ICO (REIWA's Chief Executive Officer) to maintain the form of the Compliance Programme in the terms of the written manual initially implemented by REIWA on 7 January 2000, as amended by the ICO from time to time to take into account
- REIWA's current circumstances,
  - the terms of the formal authorisation that has been provided to REIWA by the Australian Competition and Consumer Commission under Part VII of the TPA (the subject of a written determination dated 21 December 2001), and
  - the terms of the Australian Standard on Compliance Programmes AS 3806;
- (iii) maintain the Competition and Consumer Act Compliance Committee to review all matters in connection with compliance by REIWA with the TPA. That Committee shall be comprised of the President of REIWA, the Vice-presidents of REIWA, the ICO and a legal adviser from REIWA's retained solicitors. The Committee shall meet on a six-monthly basis and shall report directly to the REIWA Council. The purpose of the Committee is not to detract in any way from the role and responsibility of the Council in maintaining REIWA's compliance with the TPA but, rather, to assist the Council with that task.

## 1.2 AUSTRALIAN STANDARD AS3806

The Compliance Program the subject of this manual has also been prepared so as to comply with the Australian Standard on Compliance Programs AS3806 - 1998, as tailored to suit REIWA's particular circumstances.

## 1.3 COMPLIANCE WITH CCA & AUCTION CODE

Readers of this manual are urged to ensure that strict compliance with Part IV of the *Competition and Consumer Act*, the terms of REIWA Compliance Program and the terms of the Auction Code of Conduct occurs at all times. Any suggestions regarding the making of improvements to this manual or any queries relating to the terms of this manual or REIWA's compliance with Part IV of the *Competition and Consumer Act* or the Auction Code should be referred immediately to the ICO.

## **2. STRUCTURAL ELEMENTS**

### **2.1 COMMITMENT**

#### **2.1.1 The need for commitment**

All levels of management of REIWA are committed to implementing an effective Compliance Program with respect to Part IV of the *Competition and Consumer Act* and the REIWA Auction Code. REIWA recognises that in order for the Compliance Program to be effective active commitment is needed from the REIWA Council, all REIWA committees, the CEO of REIWA and all management and staff at REIWA. REIWA regards the policy expressed by Council on 3 November 2005 (as set out in paragraph 1.1 above) as representing a policy to be embraced by all levels of REIWA.

#### **2.1.2 Persons to whom this manual is directed**

All members of the REIWA Council and REIWA committees and all relevant staff are required, as part of their commitment to this Compliance Program, to be familiar with the terms of this manual. The term “relevant staff”, as used in this manual, means all REIWA staff who hold management positions, have substantial contact with the public or members of REIWA, or who procure from or supply to third parties goods or services on behalf of REIWA.

#### **2.1.3 The need to convey a clear compliance message**

REIWA recognises the need for the REIWA Council, REIWA committees and the management of REIWA to convey to REIWA staff and members and the public the clear message that the organisation will comply with the provisions of provisions of Part IV of the *Competition and Consumer Act* and the Auction Code and that lip-service does not constitute compliance.



#### **2.1.4 The ICO and REIWA's Legal Adviser**

The day to day compliance with the terms of the REIWA Compliance Program shall be the responsibility of the internal Compliance Officer (**ICO**). The ICO shall be the CEO of REIWA. The ICO shall consult, as the ICO sees fit and as stipulated in this manual, REIWA's Competition and Consumer legal adviser, who shall be a partner of REIWA's retained external solicitors from time to time (**REIWA's Legal Adviser**).

#### **2.1.5 Approval of manual by REIWA's Legal Adviser**

The terms of this manual and the REIWA Compliance Program have been approved by REIWA's Legal Adviser prior to its implementation.

#### **2.1.6 Queries and suggestions**

The procedures and processes set out in this manual have been prepared with the aim of both complying with the Australian Standard on Compliance Programs AS3806 - 1998 and being easy to understand and achieve. However, should any reader of this manual have any queries regarding the terms of the Compliance Program or have any suggestions for improving the Compliance Program the reader is urged to make immediate contact with the ICO.

### **2.2 COMPLIANCE POLICY**

#### **2.2.1 REIWA council policy**

As set out in paragraph 1.1 above, the REIWA Council has implemented a policy on 3 November 2005 with respect to compliance with Part IV of the CCA. The terms of that policy are set out in detail in paragraph 1.1 above.

### 2.2.2 Objectives of REIWA Compliance Program

The objectives of the REIWA Compliance Program are as follows:

- (a) to ensure that all levels of REIWA, including the Institution as a whole, the REIWA Council, REIWA committees and all REIWA staff, comply with the terms of Part IV of the *Competition and Consumer Act*;
- (b) to ensure that sufficient resources and procedures are made available to all levels of REIWA so as to enable compliance with Part IV of the *Competition and Consumer Act* and the Auction Code;
- (c) to enable effective education and training of all levels of REIWA and REIWA's general membership with respect to the terms of the Part IV of the *Competition and Consumer Act* and the need to comply with that Act and the Auction Code ;
- (d) to ensure that all breaches or potential breaches of Part IV of the *Competition and Consumer Act* and the Auction Code are identified expeditiously and to ensure that steps are implemented quickly to remedy any such problems;
- (e) to enable REIWA to ensure, as far as possible, that all contractors, sub-contractors, agents and distributors associated with REIWA comply with the terms of Part IV of the *Competition and Consumer Act* and the Auction Code.

### 2.2.3 Continuous monitoring of the REIWA Compliance Program

REIWA recognises that in order to be effective, the REIWA Compliance Program needs to be continuously assessed and monitored. The procedures and practices for ensuring that this occurs are set out in paragraphs 4.3 and 4.4 below.

## 2.3 MANAGEMENT RESPONSIBILITY

### 2.3.1 The role of management

All readers of this manual should be aware of the responsibilities of the REIWA management to ensure compliance with Part IV of the CCA and the Auction Code. Whilst the specific duties of the ICO, the Competition and Consumer Compliance Committee, the REIWA Council, REIWA committees and senior management are set out in the numerous provisions of this manual, all levels of management need to be aware of their responsibilities pursuant to the Compliance Program. Any specific issues with respect to the Compliance Program should be referred immediately to the ICO.

### 2.3.2 All levels of REIWA management to ensure compliance

All levels of REIWA management, including the REIWA Council, REIWA committees and the senior management of REIWA are responsible for ensuring that all those with whom those groups associate and/or supervise within REIWA comply with the terms of Part IV of the *Competition and Consumer Act*, the Auction Code and the terms of this Compliance Program. Further, those persons should use their best endeavours to ensure that the REIWA general membership and outside parties with whom REIWA has commercial dealings also comply with Part IV of the *Competition and Consumer Act* and the Auction Code. For the purposes of this manual, the senior management of REIWA are the following persons:

- (a) the CEO of REIWA;
- (b) the General Manager Operations/Chief Financial Officer of REIWA;
- (c) the Director, Learning;
- (d) the Director, Policy and Research;

- (e) the Director, Communications;
- (f) the Director, Agency Practice;
- (g) the Director, Business Services;
- (h) the Manager, Human Resources

## 2.4 RESOURCES

### 2.4.1 The resources provided by REIWA

The following resources are made available by REIWA, through the ICO, to all levels of REIWA, to assist in ensuring compliance with Part IV of the *Competition and Consumer Act* and the Auction Code :

- (a) the availability, at all times, of the ICO and, through the medium of the ICO, REIWA's Legal Adviser to attend to all issues and address all enquiries regarding the Compliance Program and Part IV of the *Competition and Consumer Act*;
- (b) this manual;
- (c) the provision of education and training as set out in paragraph 4.1 below;
- (d) the training and induction of staff as set out in paragraph 4.1 below;
- (e) the making available to all members of the REIWA Council, REIWA committees, REIWA staff, the executive and REIWA general membership Competition and Consumer reference material including the following:
  - (i) *The Annotated Competition and Consumer Act* by Russell Miller;
  - (ii) *Fair and Square*;

- (iii) *Summaries of the Competition and Consumer Act and the Prices Surveillance Act;*
  - (iv) *Small Business and the Trade Practices Act;*
  - (v) *Advertising and Selling;*
- (f) the provision of advice by the ICO, when need be, to the REIWA Council, REIWA committees, REIWA staff and REIWA members.

## 2.5 **CONTINUOUS IMPROVEMENT**

REIWA recognises that its continuous improvement with respect to its compliance with Part IV of the *Competition and Consumer Act* and the Auction Code involves an ongoing review of the Compliance Program and the operations of REIWA. Details of the procedures for monitoring and assessing the Compliance Program and reviewing the program are set out in paragraphs 4.3 and 4.4 below.

### **3. GUIDELINES FOR OPERATIONAL ELEMENTS**

#### **3.1 IDENTIFICATION OF COMPLIANCE ISSUES**

##### **3.1.1 Specific compliance issues**

REIWA's compliance with Part IV of the *Competition and Consumer Act* and the Auction Code needs to apply to all elements of REIWA's operations. Without limiting the scope of this statement the following issues require particular attention:

- (a) all articles, rules of practice, by-laws, regulations, policies and operating directives implemented by REIWA;
- (b) all forms produced by REIWA, including all forms made available to the REIWA general membership;
- (c) all contracts, arrangements and understandings entered into by REIWA including, but not limited to, all contracts entered into between REIWA and other training providers and/or TAFE colleges pertaining to the provision of training services by the non-REIWA party.

##### **3.1.2 The REIWA Council, the ICO, and the Competition and Consumer Act Compliance Committee**

The REIWA Council, the ICO, and the Competition and Consumer Act Compliance Committee referred to in paragraph 4.3.2 below are to consider and address all areas of the operations of REIWA that could give rise to breaches of Part IV of the *Competition and Consumer Act* or the Auction Code. Sufficient human resources and training facilities are to be provided to ensure that such breaches do not occur or, should they inadvertently occur, that they not be repeated.

### 3.1.3 **Advice of amendments to Part IV of the *Competition and Consumer Act***

In order to ensure that REIWA receives timely advice of relevant changes to Part IV of the *Competition and Consumer Act*:

- (a) REIWA's Legal Adviser will advise REIWA, by its CEO and president, of any amendments to Part IV of the *Competition and Consumer Act*;
- (b) REIWA's Legal Adviser (or REIWA's Legal Adviser's nominee) will attend senior management meetings on a six monthly basis and report on any changes to Part IV of the *Competition and Consumer Act*;
- (c) the ICO will report directly to the REIWA Council at meetings held by the Council on all aspects concerning Part IV of the *Competition and Consumer Act*, 2010 and specifically make recommendations in the light of any amendments to that legislation.

## 3.2 **OPERATING PROCEDURES FOR COMPLIANCE**

### 3.2.1 **Check-lists of individual's responsibilities**

REIWA's Legal Adviser and the ICO are to prepare and maintain check-lists reflecting a summary of the responsibilities and roles of the REIWA Council, the ICO, REIWA committees and relevant staff. Those checklists are to be provided to each of those persons and groups.

### 3.2.2 **Review by REIWA's Legal Adviser of documents created after the introduction of the Compliance Program**

All future REIWA articles of association, contracts entered into between REIWA and other training providers and/or TAFE colleges

pertaining to the provision of training services by the non-REIWA contracting party (excluding contracts of employment or services with persons or entities to provide lecturing services and the like for courses run by REIWA), Articles, standard clauses in REIWA's forms, rules of practice and by-laws, will not be implemented without REIWA presenting those documents to REIWA's Legal Adviser for the REIWA's Legal Adviser's consideration and advice, specifically having regard to the provisions of Part IV of the *Competition and Consumer Act* or, alternatively, without REIWA making application for authorisation of those documents pursuant to provisions of Part VII of that Act.

3.2.3 (i) **Review by the REIWA's Legal Adviser of REIWA Arbitration and Tribunal Awards**

REIWA's Legal Adviser will review in draft all REIWA arbitration and tribunal awards prior to the issue of those awards to ensure that they comply with the provisions of Part IV of the *Competition and Consumer Act*.

(ii) **Reference of disciplinary matters to the Real Estate and Business Agents Supervisory Board (ACCC Authorisation Requirement)**

REIWA's Legal Adviser shall consider all disciplinary hearings conducted by the Professional Standards Tribunal to determine whether the conduct the subject of any adverse disciplinary finding could have amounted to a breach of the Real Estate and Business Agents Act, 1978 or the associated Code of Conduct. If REIWA's Legal Adviser is of the view that the conduct the subject of an adverse disciplinary finding could have amounted to a breach of that Act or the associated Code he shall immediately advise the ICO of his conclusions. REIWA, through the ICO or the ICO's delegate, shall report to the Real Estate and Business Agents Supervisory Board within 21 days of such a finding being made by a Tribunal, full details of all



adverse disciplinary findings where REIWA's Legal Adviser has considered that the subject matter of that adverse finding could have amounted to a breach of the Real Estate and Business Agents Act, 1978 or the associated Code of Conduct.

#### 3.2.4 **The process of the conducting of reviews by REIWA's Legal Adviser of documents**

The process for referring to REIWA's Legal Adviser the documents detailed in paragraphs 3.2.2 and 3.2.3 above will be as follows:

- (a) the document will be provided to REIWA's Legal Adviser by the ICO, or the ICO's delegate, with an accompanying memorandum requesting REIWA's Legal Adviser to consider and advise REIWA with respect to that document, specifically having regard to the provisions of Part IV of the *Competition and Consumer Act*;
- (b) within 14 days of receiving the document from REIWA, or so soon thereafter as is reasonably required by REIWA's Legal Adviser, REIWA's Legal Adviser shall give written advice of any identified competition implications arising out of the document and recommend action to address those implications.

#### 3.2.5 **Review by the ICO of minutes of meetings**

The ICO will review all minutes of all REIWA committees, divisions and groups prior to their dissemination to identify any issues that arise under the provisions of Part IV of the *Competition and Consumer Act* and will address those issues promptly.

#### 3.2.6 **Action plan by the ICO to deal with compliance problems**

The ICO will implement the following action plan with respect to dealing with all problems, failures or faults:

- (a) the REIWA Council, REIWA committees, REIWA's Legal Adviser and REIWA staff are to report any problems, failures or faults with respect to REIWA's compliance with Part IV of the *Competition and Consumer Act*, the Auction Code or with the REIWA Compliance Program to the ICO;
- (b) the ICO is to enter into a log book kept by the ICO entitled *REIWA Part IV of the Competition and Consumer Act & Auction Code Compliance Program Log of Problems, Failures and Faults*, details of all problems failures and faults reported to the ICO or, alternatively, identified by the ICO, including:
  - (i) the date the issue arose;
  - (ii) the nature of the issue (including who reported the problem, failure or fault);
  - (iii) the steps taken by REIWA to address the issue;
  - (iv) the effectiveness of the remedial steps taken to attempt to resolve the problem, failure or fault one month after the date the issue arose and, if necessary, monthly thereafter until the issue is resolved;
- (c) the ICO, if the ICO feels it appropriate, will obtain advice from REIWA's Legal Adviser;
- (d) the ICO, if the ICO feels it appropriate, will refer the matter to the REIWA Council;
- (e) the ICO's log referred to in sub-paragraph (b) above will be reviewed at the six monthly meetings of the Competition and Consumer Act Compliance Committee referred to in paragraph 4.3.2 below.

### 3.2.7 **Monitoring of compliance**

Compliance by REIWA with Part IV of the *Competition and Consumer Act*, the Auction Code and compliance with the provisions of the REIWA Compliance Program are to be monitored in the manner set out in paragraphs 4.3 and 4.4 below.

### 3.2.8 **Education and training**

REIWA is to provide education and training to the REIWA Council, Arbitrators, members of the Professional Standards Committee, REIWA staff and REIWA general membership in the manner set out in paragraph 4.1 below including, as referred to in that paragraph, the provision of training programs to existing Arbitrators, members of the Professional Standards Committee, relevant staff (as defined in paragraph 2.1.2 above) and the REIWA general membership. Further, REIWA is to provide training at the time of the induction of new members of the REIWA Council, Arbitrators, members of the Professional Standards Committee and the Chairpersons of all other REIWA committees and REIWA staff.

### 3.2.9 **REIWA Auction Code of Conduct**

REIWA will collect data from its staff, members and any other available sources, including consumers, regarding the compliance by its members as a whole with the provisions of the Auction Code. Further, REIWA shall monitor the efficacy of the Auction Code in providing consumer protection in accordance with the general review procedures set out in section 4.4 of this manual. REIWA is also to promote the terms of the Auction Code to consumers and its members by use of methods which include, but are not limited to, providing seminars to members and taking reasonable steps to ensure that the terms of the Code are made available to consumers by members as is required under the provisions of clauses 4 and 5 of the Code.

### 3.3 IMPLEMENTATION

#### 3.3.1 Commencement of Compliance Program

The Compliance Programme referred to in this manual commenced on 7 January 2000 and was amended on 4 October 2002, 7 December 2005, 18 December 2006 and 3 November 2011.

#### 3.3.2 Provision of copies of this manual and amendments

Copies of this manual shall be provided to all members of the REIWA Council, all Arbitrators, all persons who are not legal practitioners sitting on Professional Standards Tribunals, the Chairpersons of all other REIWA Chapter committees, REIWA branches and all relevant staff (as defined in paragraph 2.1.2 above). Copies of this manual shall also be given to all new members of the REIWA Council, Arbitrators, all persons who are not legal practitioners sitting on Professional Standards Tribunals, Chairpersons of all other REIWA Chapter committees and relevant staff upon their induction into REIWA. A summary of the manual shall also be published in *REIWA News* on an annual basis. Further, all members of the REIWA Council, Arbitrators, all persons who are not legal practitioners sitting on Professional Standards Tribunals, the Chairpersons of all other REIWA Chapter committees, REIWA branches and relevant staff shall be advised in writing by the ICO of significant changes made to the manual and notice of those significant changes shall also be published in *REIWA News*.

#### 3.3.3 Up-to-date copies of the manual

Readers of this manual should note that complete up-to-date copies of the manual will be held at all times by the ICO and REIWA's Legal Adviser.

### 3.4 COMPLAINTS HANDLING SYSTEM

#### 3.4.1 ICO responsible for handling complaints

The ICO shall be responsible for dealing with all complaints relating to non-compliance by REIWA with Part IV of the *Competition and Consumer Act* or the Auction Code.

#### 3.4.2 Process for dealing with complaints

Complaints made by any person relating to the any non-compliance with Part IV of the *Competition and Consumer Act* by REIWA shall be dealt with in the following manner:

- (a) all members of staff, the REIWA Council, the REIWA committees or REIWA's Legal Adviser who become aware of a complaint being made by a member of REIWA or a member of the public or, alternatively, who wish to make a complaint themselves shall report that complaint immediately to the ICO;
- (b) the ICO is to acknowledge receipt of any complaint, by a letter, addressed to the complainant, within 3 days of receiving notification of that complaint advising the complainant that the complaint is being investigated and that the complainant is invited to make further written submissions, to be received within a further 5 days from the date of the ICO's letter;
- (c) within 14 days of REIWA's receipt of any complaint the ICO shall investigate the complaint, including by interviewing all appropriate staff and all relevant members of the REIWA Council and committees, and shall obtain all necessary advice from REIWA's Legal Adviser;
- (d) the ICO is to report monthly to the REIWA Council with respect to all complaints received by REIWA with respect to Part IV of the *Competition and Consumer Act*, the progress that

has been made with respect to the investigation of that complaint and any action taken relating to that complaint;

- (e) the ICO will report to the Competition and Consumer Act Compliance Committee whenever that committee meets as to all complaints received by REIWA since the last meeting of that committee, the progress or outcome of any investigation and action taken with respect to all complaints since the last meeting of that committee;
- (f) the ICO will keep a file or files in a central place, with respect to any complaints received by REIWA, with such file(s) containing hard copies of all documents relating to the complaint and clearly separating the documents relating to each particular complaint;
- (g) the ICO shall keep a log book entitled *Part IV of the Competition and Consumer Act Compliance Program Complaints Log Book* noting each complaint and the following details, such details to be recorded by the ICO within 14 days of the complaint being received by REIWA:
  - (i) the date the complaint was received by REIWA;
  - (ii) details of the complaint;
  - (iii) the outcome of the investigation by the ICO into the complaint;
  - (iv) any action taken by REIWA in respect to the complaint;
  - (v) the date upon which the logging of these details was completed.

### 3.5 RECORD-KEEPING

#### Areas and nature of records

The areas for which records are to be maintained by REIWA and the nature of those records are as follows:

##### 3.5.1 Failures log

A log book with respect to all problems, failures and faults recorded with respect to the REIWA Compliance Program entitled *Part IV of the Competition and Consumer Act and the Auction Code Compliance Program Log of Problems Failures and Faults*, to be kept by the ICO in the form referred to in paragraph 3.2.6(b) above.

##### 3.5.2 Complaints log

A log book with respect to all complaints received by REIWA relating to any alleged breaches by REIWA of Part IV of the *Competition and Consumer Act* or the Auction Code entitled *Part IV of the Competition and Consumer Act and the Auction Code Compliance Program Complaints Log Book*, to be kept by the ICO in the manner referred to in paragraph 3.4.2(g) above.

##### 3.5.3 Complaints file(s)

A file or files containing all relevant documents in the possession of REIWA relating to each particular complaint received in connection with any alleged breach by REIWA of Part IV of the *Competition and Consumer Act*, such file(s) to be kept by the ICO in a central location in the manner referred to in paragraph 3.4.2(f) above.

#### 3.5.4 **Training programs**

Written records, to be kept in a clearly marked file maintained by the ICO in a central place, of all training programs conducted pursuant to the provisions of paragraphs 4.1.1, 4.1.2 and 4.1.3 below. Such written records are to include the date the training program took place, the name of REIWA's Legal Adviser who presented the training program, the names of all persons attending the training program and the position of each attending person (that is, whether the person is a member of the REIWA Council, an arbitrator, a member of the Professional Standards Committee, a member of any other REIWA committee, a general member of REIWA and, with respect to REIWA staff members, a description of the position of that attendee within REIWA).

#### 3.5.5 **Induction**

A written record, to be kept in a clearly marked file maintained by the ICO in a central place, of the training as part of the induction into REIWA of all new members of the REIWA Council, new Arbitrators, all persons who are not legal practitioners sitting on Professional Standards Tribunals, new Chairpersons of all other REIWA Chapter committees and Branches and members of REIWA staff pursuant to paragraph 4.1.4 below. These records are to include the date upon which the training took place, the person who provided the training, the nature of that training and, in the case of members of the REIWA Council, Arbitrators, all persons who are not legal practitioners sitting on Professional Standards Tribunals, the Chairpersons of the other REIWA Chapter committees and Branches and the senior management of REIWA, the dates upon which the person has met with the ICO to discuss REIWA's compliance with Part IV of the *Competition and Consumer Act* and the Auction Code and the REIWA Compliance Program and the date upon which a copy of this manual was provided to that person.



### 3.5.6 **REIWA's Legal Adviser's review of rules, regulations, contracts, forms and awards**

A documentary record to be kept by REIWA's Legal Adviser in a separate file maintained for this purpose of all reviews and advice given by REIWA's Legal Adviser with respect to:

- (a) all REIWA articles of association, contracts entered into between REIWA and other training providers and/or TAFE colleges pertaining to the provision of training services by the non-REIWA contracting party (excluding contracts of employment or services with persons or entities to provide lecturing services and the like for courses run by REIWA), standard clauses, rules of practice, by-laws, policies and operating directives proposed to be implemented by REIWA following the date of implementation of the REIWA Compliance Program and provided to REIWA's Legal Adviser by the ICO for consideration and advice by REIWA's Legal Adviser pursuant to paragraph 3.2.2 above;
- (b) all draft REIWA arbitration and tribunal awards provided to REIWA's Legal Adviser for REIWA's Legal Adviser to review pursuant to paragraph 3.2.3 above.

The documentary records to be kept by REIWA's Legal Adviser will include:

- (i) a description of the document reviewed;
- (ii) the date upon which REIWA's Legal Adviser reviewed the document;
- (iii) a copy of the written advice provided by REIWA's Legal Adviser of any identified competition restraint implications arising out of the document and any action recommended by REIWA's Legal Adviser to address those implications.

### 3.5.7 REIWA's Legal Adviser's review of compliance program and advice of legislative changes

A documentary record to be kept by REIWA's Legal Adviser in a separate file maintained for this purpose recording details of:

- (a) the advice provided by REIWA's Legal Adviser to REIWA, by its CEO and President, of any amendments to Part IV of the *Competition and Consumer Act* pursuant to paragraph 3.1.3(a) above;
- (b) monthly senior management meetings attended by REIWA's Legal Adviser (or REIWA's Legal Adviser's nominee) pursuant to paragraph 3.1.3(b) above.

This documentary record will include:

- (i) a description of the task concerned;
- (ii) the date upon which the reviews were conducted, the date upon which REIWA's Legal Adviser provided advice to REIWA of legislative amendments or the date upon which REIWA's Legal Adviser attended senior management meetings;
- (iii) details of the process of the review, the advice of legislative changes or the meetings with senior members of management; and
- (iv) any alterations made to the Compliance Program as a consequence of REIWA's Legal Adviser's review within the 3 week period referred to in paragraph 4.4.1(a) below.

### 3.5.8 Review by ICO of minutes

A documentary record is to be kept in a separate file in a central place to be maintained by the ICO containing details of the review by the ICO pursuant to paragraph 3.2.5 above of all minutes of all REIWA

committees, divisions and groups prior to their dissemination. This documentary record will include:

- (a) a brief description of the document;
- (b) the date upon which the ICO reviewed the document or the date the document was returned to the relevant committee, division or group;
- (c) a written record of any issues identified by the ICO arising out of the document with respect to the provisions of Part IV of the *Competition and Consumer Act* and the steps taken by the ICO to address those issues.

#### 3.5.9 **Competition and Consumer Act Compliance Committee meetings**

A documentary record is to be kept in a separate file in a central place to be maintained by the ICO of all meetings of the Competition and Consumer Act Compliance Committee that take place pursuant to the provisions of paragraph 4.3.2 below. Such records are to include the dates of all such meetings, the names of persons attending those meetings, the matters discussed at those meetings and any decisions or recommendations made at those meetings.

#### 3.5.10 **Summaries of REIWA's Legal Adviser's reviews, complaints and training programs**

A documentary record is to be kept in a separate file in a central place to be maintained by the ICO summarising:

- (a) the records of the reviews and advice prepared by REIWA's Legal Adviser pursuant to paragraphs 3.2.2, 3.2.3 and 3.5.6 above;
- (b) the log book entitled *Part IV Competition and Consumer Act and the Auction Code Compliance Program Complaints Log*

*Book* prepared by the ICO pursuant to the provisions of paragraphs 3.4.2(g) and 3.5.2 above;

- (c) the records kept by the ICO of the provision of training by REIWA's Legal Adviser pursuant to paragraph 3.5.4 above and paragraphs 4.1.1, 4.1.2 and 4.1.3 below.

These summary documents will be prepared by the ICO within 1 calendar month of each of the reviews conducted by REIWA's Legal Adviser referred to in paragraph 4.4.1(a) below.

## 3.6 IDENTIFICATION AND RECTIFICATION

### 3.6.1 Meetings between ICO and REIWA's Legal Adviser

The ICO and REIWA's Legal Adviser shall meet regularly (bearing in mind REIWA's legal advisers generally attend at REIWA twice per week) to analyse the documentary records referred to in paragraph 3.5 above to ascertain whether there are any trends or on-going areas of concern regarding compliance by REIWA with Part IV of the *Competition and Consumer Act*. or the Auction Code The ICO shall take immediate steps to address any issues that are identified at these quarterly meetings and that appear to be unresolved.

### 3.6.2 Meetings between REIWA's Legal Adviser and senior management

When the senior management of REIWA meet with REIWA's Legal Adviser on a six monthly basis as referred to in the provisions of paragraph 3.1.3(b) above discussions will take place with a view to identifying and taking steps to rectify any trends or on-going areas of non-compliance within REIWA with respect to Part IV of the *Competition and Consumer Act*.

### 3.6.3 **ICO reporting to REIWA Council**

When the ICO reports to the REIWA Council at meetings held by the Council pursuant to paragraph 3.1.3(c) above the ICO shall identify any trends or on-going areas of non-compliance and the Council shall give consideration to the steps that are being taken or should be taken to rectify that non-compliance.

### 3.6.4 **Trade Practice Act Compliance Committee and its reports to the REIWA Council**

When the Competition and Consumer Act Compliance Committee meets on a six monthly basis pursuant to paragraph 4.3.2 below that Committee shall identify any trends or on-going areas of non-compliance by REIWA with the provisions of Part IV of the *Competition and Consumer Act* and the Committee will consider implementing or recommending the implementing of steps to rectify those matters. Further, the ICO will provide a report to the REIWA Council following each quarterly meeting of the Compliance Committee to consider this report as set out in paragraph 4.3.2 below.

### 3.6.5 **Annual Audit by REIWA's Legal Adviser of membership applications (ACCC Authorisation Required)**

The ICO shall provide to REIWA's Legal Adviser within 14 days of 30 June each year summaries of all membership applications made to REIWA during the previous financial year. Those records should include the relevant membership application forms, supporting documents, a summary of the reasons for any rejection of a membership application, all documents relating to any hearing conducted with respect to a membership application, any reasons for decision delivered following any membership related hearings, relevant correspondence prepared by the REIWA Council or any relevant sub-committee, and any other documents that the ICO believes are relevant. Within a period of a further 14 days REIWA's Legal Adviser shall conduct an audit of the membership applications and hearings in the

light of the provisions of Part IV of the CCA and will subsequently provide a written report to the ICO of the result of that audit, together with any recommendations as to any remedial action that REIWA needs to take.

### 3.7 **SYSTEMATIC AND RECURRING PROBLEMS**

REIWA acknowledges that systematic and recurring problems are likely to carry significant risks for REIWA and could be more difficult to identify. Such problems can escalate over time. Consequently, when the individuals and bodies referred to in paragraph 3.6 above meet to analyse any trends or on-going areas of non-compliance with Part IV of the *Competition and Consumer Act* and/or the Auction Code they are to give particular attention to identifying and rectifying any systemic or recurring compliance problems.

### 3.8 **REPORTING**

#### 3.8.1 **REIWA to encourage reporting of breaches**

REIWA encourages the reporting of breaches or potential breaches of Part IV of the *Competition and Consumer Act* and the Auction Code and regards this reporting as being essential to ensure that REIWA and its members comply with the *Competition and Consumer Act* and the Auction Code. All members of the REIWA Council, Arbitrators, the Professional Standards Committee, other REIWA committees, staff and general members are encouraged to report to the ICO any breaches or potential breaches of the CCA or the Auction Code by REIWA, its members or any associated third parties. All these reports will be considered by the ICO thoroughly. Insofar as reports are made relating to conduct by REIWA itself (whether that conduct is by the REIWA Council, Arbitrators, REIWA committees, REIWA branches or REIWA staff), such reporting will be dealt with in the manner referred to in paragraph 3.4 above with respect to complaints and in the manner referred to in paragraph 3.2.7 with respect to the identification of problems, failures and faults. Such reporting is to be seen as being a

positive and non-threatening action designed to bring about solutions to problems. REIWA will manifest its desire to encourage reporting of breaches and potential breaches in the following ways:

- (a) the implementation of the REIWA Compliance Program in the manner set out in this manual;
- (b) the training of existing and future members of the REIWA Council, Arbitrators, members of the Professional Standards Committee, Chairpersons of all other REIWA committees, REIWA staff and general members in the manner referred to paragraph 4.1 below;
- (c) the giving of advice to the REIWA general membership that REIWA encourages the reporting of breaches or potential breaches of Part IV of the CCA and/or the Auction Code, with such advice being given by the ICO to members through the *REIWA News*.

### 3.9 MANAGEMENT SUPERVISION

REIWA acknowledges that management supervision is an integral part of an effective compliance program. This helps to ensure that staff fully understand REIWA's policies and operational procedures on compliance with Part IV of the *Competition and Consumer Act* and the Auction Code and how these issues effect their roles at REIWA. Further this supervision helps to ensure that staff carry out compliance procedures effectively. Senior management are therefore urged to ensure proper training and supervision of all staff with whom individual members of the REIWA senior management come into contact on a day-to-day basis insofar as compliance by those staff members with Part IV of the *Competition and Consumer Act* and the REIWA Compliance Program is concerned.

## **4. GUIDELINES FOR MAINTENANCE ELEMENTS**

### **4.1 EDUCATION AND TRAINING**

#### **4.1.1 Training programs required to be presented by REIWA's Legal Adviser**

REIWA's Legal Adviser shall provide training every 12 months concerning the provisions of Part IV of the *Competition and Consumer Act* and the Auction Code to REIWA's general membership and REIWA arbitrators, all persons who are not legal practitioners sitting on Professional Standards Tribunals and REIWA relevant staff as defined in paragraph 2.1.2 above who have been appointed to those positions during the previous 12 month period.

#### **4.1.2 Additional training programs**

Additional training programs may be provided by REIWA's Legal Adviser as the REIWA's Legal Adviser or ICO believe are necessary to maximise the extent of the education of the REIWA Council, members of REIWA committees, REIWA staff and general REIWA membership as to the terms of Part IV of the *Competition and Consumer Act* and the Auction Code.

#### **4.1.3 Content of training programs**

The training programs presented by REIWA's Legal Adviser shall all:

- (a) include examples illustrative of the nature of the activities of and the day-to-day work of the target audience;
- (b) be presented in language that the target audience understands rather than in jargon or technical terms;
- (c) include a method of presentation such that the audience participates in the training program and has an opportunity to pose questions of REIWA's Legal Adviser.



#### 4.1.4 Induction of new councillors, staff and others

All new members of the REIWA Council, new Arbitrators, new persons sitting on Professional Standards Tribunals (who are not legal practitioners), new Chairpersons of all other REIWA committees and new REIWA staff shall, as part of their induction to REIWA, are to be trained by the ICO or a member of the REIWA senior management delegated for that purpose by the ICO. This training shall take place with respect to Part IV of the *Competition and Consumer Act*, the need for compliance with that legislation by REIWA, the Auction Code and the provisions of the REIWA Compliance Program. This training shall include:

- (a) a face-to-face meeting with the trainer to discuss the significant elements of Part IV of the *Competition and Consumer Act*, and the Auction Code, the details of this compliance program and REIWA's policy with respect to compliance. The detail in which the trainer needs to address these issues will depend upon the seniority of the person within REIWA and the extent to which the activities of the person being trained might be effected by the provisions of the Part IV of the *Competition and Consumer Act* and the Auction Code;
- (b) in the case of the training of new members of the REIWA Council, new Arbitrators, new members of the Professional Standards Committee, new Chairpersons of all other REIWA committees and relevant staff (as defined in paragraph 2.1.2 above), the presentation by the trainer to the person concerned of a copy of this manual pursuant to paragraph 3.3.2 above. The person being trained is to be advised that he or she is required as part of the induction process to read the manual in detail and the person concerned shall be encouraged to raise any questions that the person may have with the ICO.

## 4.2 VISIBILITY AND COMMUNICATION

### 4.2.1 Publicising of the REIWA Compliance Program

The REIWA Compliance Program's existence and purpose and the obligations it places upon the members and staff of REIWA shall be publicised in the following ways so as to become a normal part of REIWA every-day organisational practice:

- (a) the conducting of training programs by REIWA's Legal Adviser pursuant to paragraphs 4.1.1, 4.1.2 and 4.1.3 above;
- (b) the training of new members of the REIWA Council, Arbitrators, members of the Professional Standards Committee, Chairpersons of all other committees and REIWA staff pursuant to paragraph 4.1.4 above;
- (c) the reporting to the REIWA Council by the ICO pursuant to paragraph 3.1.3(c) above;
- (d) the reporting by REIWA's Legal Adviser to the ICO, the President of REIWA and the senior management of REIWA pursuant to paragraphs 3.1.3(b) and (b) above;
- (e) the reporting to the REIWA Council by the Competition and Consumer Act Compliance Committee pursuant to paragraph 4.3.2 below;
- (f) the reviewing of documents by the ICO and REIWA's Legal Adviser pursuant to paragraphs 3.2.2, 3.2.3, 3.2.4 and 3.2.5 above;
- (g) the provision of copies of this manual to the persons and groups identified in paragraph 3.3.2 above;
- (h) the supervision of staff by senior management pursuant to paragraph 3.9 above;

- (i) reporting on the provisions of the REIWA Compliance Program and this manual, including provisions relating to the notification of breaches of Part IV of the *Competition and Consumer Act* and the Auction Code, in *REIWA News* pursuant to paragraphs 3.3.2 and 3.8 above;
- (j) the implementation of a complaints handling system as referred to in paragraph 3.4 above;
- (k) the implementation of a procedure for reporting compliance problems, failures and faults as detailed in paragraph 3.2.6 above.

#### 4.3 MONITORING AND ASSESSMENT

##### 4.3.1 **Methods of monitoring and assessing the REIWA Compliance Program**

REIWA shall monitor and assess the effectiveness of the REIWA Compliance Program in the following ways:

- (a) day-to-day assessment and monitoring of the REIWA Compliance Program by the ICO;
- (b) assessment and monitoring by REIWA's Legal Adviser on an on-going basis as a consequence of the fulfilling of REIWA's Legal Adviser's role in the REIWA Compliance Program as detailed in this manual;
- (c) the meeting of REIWA's Legal Adviser with the ICO on a regular basis pursuant to paragraph 3.6.1 above and the meeting by REIWA's Legal Adviser with the REIWA senior management of REIWA on a six monthly basis pursuant to paragraph 3.1.3(b) above;
- (d) assessment and monitoring by the REIWA Council on an on-going basis, including an analysis of all reports provided to

it by the ICO, REIWA's Legal Adviser and the Competition and Consumer Act Compliance Committee.

- (e) the holding of meetings by the Competition and Consumer Act Compliance Committee on a six monthly basis pursuant to paragraph 4.3.2 below.

#### 4.3.2 **The Competition and Consumer Act Compliance Committee**

The Competition and Consumer Act Compliance Committee has been created by resolution of the REIWA Council on 7 December 1999. That Committee is comprised of the President of REIWA, the Vice-Presidents of REIWA, the ICO and REIWA's Legal Adviser. The Committee is to report directly to the REIWA Council in the manner referred to in this paragraph below. The purpose of the Committee is not in any way to detract from the commitment of the REIWA Council to being actively involved in ensuring full compliance by REIWA with the provisions of Part IV of the *Competition and Consumer Act* and the Auction Code. Rather, the purpose of the Committee is to assist the Council in this role and to aid in ensuring that no future breaches of the *Competition and Consumer Act* and the Auction Code are committed by REIWA or its members. The Committee will report to the REIWA Council by the ICO preparing a report for the Council following each six monthly meeting of the Committee and this report will be considered by the Council at its next usual meeting. The Committee will review the following documents and issues at every meeting:

- (i) any amendments that have been made to Part IV of the *Competition and Consumer Act* since the last meeting of the Committee;
- (ii) any issues arising out of the reviews of REIWA documents by REIWA's Legal Adviser and the ICO pursuant to paragraphs 3.2.2, 3.2.3, 3.2.4 and 3.2.5 above;

- (iii) the *Part IV of the Competition and Consumer Act Compliance Program Log of Problems, Failure and Faults* kept by the ICO pursuant to paragraph 3.2.6(b) above;
- (iv) any problems or issues that have arisen with the provision of training programs by REIWA's Legal Adviser or the provision of training as part of the induction of persons into REIWA pursuant to paragraph 4.1 above;
- (v) any problems or issues that have arisen with the REIWA Compliance Program or this manual;
- (vi) the *Part IV of the Competition and Consumer Act and the Auction Code Compliance Program Complaints Log Book* kept by the ICO pursuant to paragraph 3.4.2(g) above;
- (vii) the keeping of the records referred to in paragraph 3.5 above;
- (vii) any systemic or recurring problems with REIWA's compliance with Part IV of the *Competition and Consumer Act*;
- (viii) the effectiveness of management supervision of staff with respect to compliance by staff members with Part IV of the *Competition and Consumer Act*;
- (ix) the effectiveness of REIWA's publicising of the REIWA Compliance Program pursuant to paragraph 4.2 above;
- (x) any perceived failure to comply with Part IV of the *Competition and Consumer Act* or the Auction Code by the REIWA general membership or other persons or bodies with which REIWA deals.

#### 4.3.3 **Matters to be emphasised in monitoring the REIWA Compliance Program**

Those involved in monitoring and assessing the REIWA Compliance Program as referred to in paragraph 4.3.1 above shall have particular

regard to the effectiveness of the training of members of the REIWA Council, Arbitrators, members of the Professional Standards Tribunal, Chairpersons of all other REIWA committees, staff and the general membership of REIWA; the effectiveness of the risk prevention strategies contained in the REIWA Compliance Program; the effectiveness of the REIWA Compliance Program itself and this Manual; and the number, details and extent of any alleged breaches by REIWA of Part IV of the *Competition and Consumer Act* or the Auction Code.

#### 4.4 REVIEW

##### 4.4.1 Methods of review

This REIWA Compliance Program shall be reviewed in the following manner:

- (a) the Competition and Consumer Act Compliance Committee shall review the REIWA Compliance Program on an on-going basis pursuant to the provisions of paragraph 4.3.2 above;
- (b) the REIWA Council will review the effectiveness of the REIWA Compliance Program on, at least, an annual basis in the light of the reports it receives from the Competition and Consumer Act Compliance Committee pursuant to paragraph 4.3.2 above and from the ICO pursuant to paragraph 3.1.3(c) above.

##### 4.4.2 Purpose of reviews

The purpose of the review by REIWA of its Compliance Program is to ensure:

- (a) that the REIWA Compliance Program is still appropriate for the organisation's current operations;

- (b) that the REIWA Compliance Program is performing satisfactorily.

#### 4.5 LIAISON

##### 4.5.1 Liaison by the ICO with ACCC and reporting to the ACCC

The ICO will liaise with the ACCC by way of referring to the ACCC any difficulties that REIWA has with complying with the orders made by His Honour Justice French in the Federal Court on 8 October 1999 and seeking guidance on Part IV of the *Competition and Consumer Act* issues that might arise from time to time.

#### 4.6 ACCOUNTABILITY

##### 4.6.1 Accountability of the ICO

The ICO is directly accountable with respect to the implementation of the REIWA Compliance Program to the REIWA Council.

##### 4.6.2 Accountability of individual Council members, Arbitrators and committee members

Individual Council members, individual arbitrators and REIWA committee members are directly accountable with respect to the implementation of this REIWA Compliance Program to the REIWA Council in its capacity as the REIWA governing body.

##### 4.6.3 Accountability of REIWA staff and staff job descriptions

All members of REIWA staff are directly accountable to the ICO and the accountability of staff members and their individual responsibilities pursuant to the REIWA Compliance Program shall be included in staff job descriptions.

**REIWA**

**DISPUTE**

**RESOLUTION**

**MANUAL**



# REIWA DISPUTE RESOLUTION MANUAL

## CONTENTS

1. **REIWA CONCILIATION AND ARBITRATION PROCEDURES AS DETERMINED BY THE REIWA COUNCIL**
  - 1.1 Procedure for Conciliation Conferences
  - 1.2 Procedure for Arbitration
  
2. **CONCILIATION CONFERENCE AND ARBITRATION RESOURCES**
  - 2.1 Extracts from REIWA Articles
  - 2.2 Commercial Arbitration Act, 1985 (as amended)
  - 2.3 REIWA Conciliation Conference Guidelines
  - 2.4 REIWA Arbitration Conference Guidelines
  - 2.5 .....
  - 2.6 .....

# **PART 1**

## **REIWA CONCILIATION AND ARBITRATION PROCEDURES AS DETERMINED BY THE REIWA COUNCIL**

## 1.1 PROCEDURES FOR CONCILIATION CONFERENCES

1. Pursuant to Article 44.5 of the REIWA Articles, the Council directs that all disputes referred to in that Article shall be referred to a Conciliation Conference and the parties to each dispute shall attend such a conference upon being provided with not less than fourteen (14) days notice under that Article.
2. The REIWA Council or the Executive Director of REIWA will nominate with respect to each Conciliation Conference a Conciliator who shall endeavour to arrange to meet the parties for a conference to be held no sooner than fourteen (14) days and no later than twenty eight (28) days after his or her appointment.
3. No less than seven (7) days before any Conciliation Conference the parties to the dispute shall provide to the Conciliator written submissions as to that party's arguments with respect to that dispute.
4. The Conciliator may conduct the proceedings in such manner as he or she considers appropriate having regard to the nature of the dispute. He or she shall perform the functions impartially, independently, fairly and objectively, giving proper consideration to the nature of the dispute, the level of formality required by the proceedings, the interests of both parties and the rights and the obligations of the parties with regard to the matter in dispute.
5. After termination of a Conciliation Conference the Conciliator shall not accept an appointment as arbitrator or otherwise provide assistance on behalf of one of the parties in any subsequent arbitration or litigation relating to the subject of the Conciliation Conference.

## 1.2 PROCEDURES FOR ARBITRATIONS

1. An Arbitration Panel shall be convened to conduct an Arbitration hearing under Article 44 of the REIWA Articles upon:
  - (a) REIWA receiving a written request for such a hearing from a REIWA member;
  - (b) REIWA receiving a written request for such a hearing from a member of the public who has agreed in writing to submit the dispute concerned and abide by an arbitration resolution as stipulated in Article 44.1.2 of the REIWA Articles; and/or
  - (c) the REIWA Council of its own motion directing that such a hearing be conducted

PROVIDED THAT nothing in this Dispute Resolution Manual shall require a member of the public who is not a member of REIWA to be a party to an arbitration hearing unless that entity has agreed in writing to participate in that hearing as required by Article 44.1.2 of the REIWA Articles.

2. Once an Arbitration hearing has been convened by the Arbitration Panel notice of the date of that hearing shall be given to all concerned no less than fourteen (14) days before the hearing.
3. Unless advised otherwise by the Arbitration Panel, the parties to an arbitration shall provide to the Arbitrator not less than seven (7) days prior to hearing of the arbitration copies of all documentary evidence that the party proposes relying upon at the hearing. Wherever possible, REIWA shall provide copies of any documentary evidence provided by a party prior to the hearing to all other parties to the arbitration.
4. The Licensees in bona fide control of any parties and any sales representatives involved in the dispute must wherever reasonably possible attend the Arbitration Hearing. Written confirmation of this attendance is required by REIWA from the relevant party to the dispute at least seven (7) days prior to the date of the Hearing.
5. An arbitration fee of such amount as the Council may fix from time to time and any further sum payable under Article 44 of the REIWA Articles is payable to the Institute by each party to any dispute which is referred to arbitration. The person requiring an arbitration must pay his or her fee when forwarding any written request for an arbitration or within 7 days of being requested to do so by the Executive Director of REIWA. Any other party to any arbitration hearing must pay his or her fee within seven (7) days of being requested to do so by the Executive Director of REIWA.

# **PART 2**

# **CONCILIATION CONFERENCE AND ARBITRATION RESOURCES**

## 2.3 REIWA CONCILIATION CONFERENCE GUIDELINES

1. Thank those present for attending.
2. Give some positive expectation that a solution will be reached today.
3. Make the following clear to the parties:
  - 3.1 That the Conciliation Conference is aimed to bring parties together in a spirit of understanding to hear their point of view and to see if a solution is available;
  - 3.2 That if no solution is reached at this meeting it does not compromise any future action in Arbitration;
  - 3.3 That all proceedings and statements here are “without prejudice” and can not be relied on or referred to at a future hearing;
  - 3.4 That in the event that an offer is made and not accepted that offer will not be referred to or prejudice the case in any Arbitration proceedings;
  - 3.5 That all matters here are confidential and any notes taken will be destroyed;
  - 3.6 That conciliators are chosen for their expertise and experience;
  - 3.7 That this is a matter of professional practice and in that regard you have considerable experience as a real estate agent. Also mention your own experience as an Arbitration Chairman;
  - 3.8 That this meeting will be conducted in an informal way, but that you might invite the Claimant to present his/her case first. You will then give the Respondent the opportunity to ask questions of the Claimant before presenting his/her case and you also may ask questions of the parties on any points which need clarification;
  - 3.9 That this dispute is between the parties and each party should address each other not the conciliator;
  - 3.10 That ideally the parties will reach their own agreement, however, the parties may ask questions of you to see how you think the case would go if it should proceed to Arbitration. Explain that if you wish to discuss an issue with one of the parties, this must be done in private. Explain that you can make recommendations but those recommendations need to be accepted by both parties;

- 3.11 That if the parties agree to a resolution, we will have a short note prepared and signed today and it is all over;
  - 3.12 If no resolution is reached today, the matter goes to Arbitration in the normal way;
  - 3.13 That it is undesirable to fail to reach a resolution today, in that the parties will need to spend more time at REIWA presenting their case and time equals money;
  - 3.14 That your function ceases here. Should Arbitration be necessary then a panel of three other Arbitrators will hear all the same evidence that has been presented today;
  - 3.15 That you have a copy of the whole file and that you have read it and are familiar with the facts provided by both parties;
  - 3.16 That there are 2 ground rules to the conciliation which are (i) no interruptions, and (ii) no abusive language.
4. You should then invite the Claimant to present his case.

## 2.4 REIWA ARBITRATION CONFERENCE GUIDELINES

### 1. INTRODUCTION

Where two or more parties have a dispute, or difference, arbitration in some instances may be used to determine the matters.

Arbitration, therefore, involves the administration of justice and findings of matters of law and of fact.

If the award - the outcome of the arbitration - is wrong in law this may lead to an appeal, if the award is wrong on the facts there can not be an appeal but there may be allegations of misconduct on the part of the Arbitrator to have the arbitration set aside.

There are two aspects to “good arbitration”, that minimise the possibility of an appeal or allegations of misconduct, the proper conduct of the hearing and the award itself.

### 2. THE HEARING

#### 2.1 Conduct of Hearing

The arbitrator’s involvement begins before the actual hearing itself. In general commercial arbitration, the Arbitrator is responsible for the administrative work necessary to bring about the arbitration and also conducts the preliminary conference. At this conference the parties discuss with the Arbitrator and agree such things as:

- the general nature of the dispute and the approximate amount of the claim and any counter-claim;
- attempts to settle the dispute;
- expected length of hearing;
- any supplementary matters which may be submitted to arbitration;
- the payment of the Arbitrator’s fees;
- timetable for delivery of pleadings;
- whether a transcript of evidence is required; and
- the date for the hearing.



It is also customary for an Arbitrator to warn the parties that they should not communicate directly with the Arbitrator without sending copies of such communications to the other side. Verbal communication between the parties and the Arbitrator should not take place.

REIWA Arbitrators are very fortunate in that a great deal of the administrative work is carried out for them and the need for preliminary conference does not arise. The only preparation that they are required to do before the hearing is to read the correspondence and other papers relating to the dispute.

## 2.2 The Actual Hearing

In its simplest form, a hearing is where the arbitrator, the disputing parties, their lawyers, advisors and witnesses meet to determine the issues in dispute. The Arbitrator controls the procedures. The tenor of the meeting can range from informality to one of high formality. It is a time when each party is given the opportunity to argue the case and put forward evidence in support of that agreement.

The arbitration does not need to be complex have an excessively long period of hearing time for the arbitrator to understand the issues involved. In some disputes the issues are complicated by the animosity between the parties, the belief by each party that they are right and the parties ignorance of arbitration law and procedure. Most hearings have a degree of formality. It is this, and the Arbitrator's knowledge of arbitration law, procedures and experience, together with the judicial attitude which will work together for a well conducted hearing.

In REIWA arbitrations, of course, no legal representation is permitted but all of the other features mentioned above are there.

It is expected that prior to before the hearing both the arbitrator and the parties will understand the nature of the proceedings. The arbitrator would be expected to familiarise him or herself once more with the questions in issue by reading the documents and noting areas where he or she may need further explanation from the parties. It is often the practice for the parties to agree the questions which the Arbitrator needs to answer prior to the hearing. These questions themselves require close scrutiny by the Arbitrator. Sometimes they are drawn in a way which would give rise to ambiguous answers or they do not reflect the issues which have arisen between the parties.

If the parties have not agreed a set of questions to be answered by the Arbitrator, then the Arbitrator should pursue this aspect. A set of agreed questions prepared by the parties which are to be answered by the Arbitrator concentrates the minds of the parties to the issues involved.

The management of the hearing should be such that everything will be done by the Arbitrator to assist the progress of the hearing. He should manage the

hearing so that the matters which the parties raise can be handled in a proper and skilful manner. Most Arbitrators have checklists of the items which are required at the hearing, these include such obvious things as a notebook, pens, pencils, a Bible, texts of oaths and affirmations, copy of the *Commercial Arbitration Act*, files of the Claimant's documents, Respondent's documents and correspondence, envelopes for the filing of exhibits.

### 2.3 Procedure

The arbitrator at all times needs to show judicial ability and competence. Section 14 of the *Commercial Arbitration Act* ("the Act") allows the Arbitrator to conduct proceedings in such manner as he thinks fit but subject to the Act and any applicable Arbitration Agreement. This does not mean that the Arbitrator can proceed without applying the principles of natural justice such as the right to be heard. Section 22 of the Act states that the arbitrator shall determine matters according to law unless otherwise agreed in writing by the parties. The Act provides that if the parties agree in writing that the Arbitrator does not have to make a determination in accordance with the law, he has the discretion to determine a question by reference to considerations of general justice and fairness.

### HEARING SUMMARY PROCEDURE

|     | Claimant  | Respondent  |
|-----|---|---|
| 1.  | The Claimant opens the case by an address which briefly sets out the nature of the disputes, what the Claimant alleges and what evidence will be called on behalf of the Claimant; at the same time if there is a counterclaim, the Claimant will open a defence to the counterclaim. |   |
| 2.  | <b>Examination-in-Chief</b><br>The claimant calls and examines the witness with the intention of seeking evidence to support the Claimant's case.   |   |
| 3.  |   | May cross-examine the Claimant's witness.   |
| 4.  | <b>Re-examination</b><br>If the witness is cross-examined the Respondent may re-examine the witness on any matter raised in cross examination. Respondent's case closed.  |   |
| 5.  |   | Respondent's case opens in a similar procedure to that of Claimant's opening.   |
| 6.  |   | <b>Examination-in-Chief</b><br>Respondent calls and examines witnesses with the intention of seeking evidence which will support the Respondent's case.   |
| 7.  | Claimant may <b>Cross-Examine</b> the Respondent's witness.   |   |
| 8.  |   | <b>Re-Examination</b><br>If the witness is cross-examined the Respondent may re-examine the witness on any matter raised in cross-examination. Respondent's case closed.  |
| 9.  | Questions from the Arbitrator   |   |
| 10. | Opportunity for the parties to examine-in-chief, cross-examine, re-examine on matter raised by the Arbitrator.  |   |
| 11. |   | <b>Respondent's Closing Address</b><br>Respondent speaks first unless Respondent has not called evidence. Puts forward a précis of Respondent's evidence and argument. It is frequently in writing and speaking is confined to some of the main points. |
| 12. | <b>Claimant's Closing Address</b><br>The procedures are similar to the Respondent's closing address.  |   |

## 2.4 Misconduct of the Hearing

The *Commercial Arbitration Act* does not define misconduct exhaustively, it merely states that it includes corruption, fraud, partiality and bias. Justice Atkin in the *Williams v Wallis & Cox* (1914) 2 KB 478, discussing the expression “misconduct” stated:

“That expression does not necessarily involve personal turpitude on the part of the Arbitrator, and such suggestion has been expressly disclaimed in this case. The term does not really amount to much more than such a mishandling of their arbitration as is likely to amount to some substantial miscarriage of justice.”

*London Export Corporation Ltd v Jubilee Coffee Roasting Ltd* (1958) 1 WLR 271, Justice Diplock, analysed the tasks of the Court when asked to set aside an award on the grounds of misconduct. According to His Honour, “misconduct” in the context of commercial arbitration embraced two distinct grounds for the setting aside of an award (i) a breach of the procedures upon which the parties have agreed; and (ii) a violation of the rules of natural justice. He stated that:

“Where the award has been made by the Arbitrator in breach of the agreed procedures, the Applicant is entitled to have it set aside, not because there has been necessarily any breach of the rules of natural justice, but simply because the parties have not agreed to be bound by an award made by the procedures in fact adopted.”

One can readily understand why an arbitration award should be set aside on the grounds of breach of an agreed procedure. The question of the breach of natural justice is somewhat more complex. Justice Marks in *Gas and Fuel Corporation of Victoria v Wood Hall Ltd* (1978) VR 385 stated:

“There are two rules of principles of natural justice. The first is that an Adjudicator must be disinterested and unbiased. This is expressed in the latin maxim *memo judex in causa sua*. The second principle is that the parties must be given adequate notice and opportunity to be heard. This is expressed in the latin maxim *audi alteram partem*. Another way of putting the first rule is that justice must not only be done but appear to be done and the second rule is that each party must be given a fair hearing and a fair opportunity to present its case. Transcending both principles are the notions of fairness and judgement only after a full and fair hearing given to the parties.”

On the basis of judicial decisions it is possible to draw the following principles relevant to the misconduct of Arbitrators:

- Misconduct can amount to some irregularity in the procedures adopted by the Arbitrator. It is not constituted by incorrect

findings of fact, errors of law and misconceptions in the nature of contentions put forward;

- Mistakes of law or fact or the mis-statement or misconception of the parties submissions by the Arbitrator, although not amounting to “misconduct” by themselves may in certain circumstances arouse in the mind of a fair-minded observer a reasonable suspicion that they stem from the failure to consider relevant contentions and/or submissions of a fair and unprejudiced mind;
- It may be relevant to determine whether the developed trend or pattern which had the effect or appeared with reason to have the effect of unfairly disadvantaging a party.

In a Victorian case the removal of an Arbitrator for misconduct was ordered. The misconduct referred to included accepting into evidence a book of documents without the approval of all parties, the Arbitrator persisting in communicating directly with one party when he was aware that both parties were represented by solicitors and the Arbitrator travelling to the building site, a journey of 20 kms with a representative of one of the parties. In this particular case the Court considered the Arbitrator’s conduct was such that not only should the Arbitrator’s award be set aside but that he should be forced to pay the costs of the parties to the arbitration.

### 3. The Award

The Award is the culmination of all the matters put before the Arbitrator for consideration. It occurs after he has analysed the evidence, made a determination and with very few exceptions committed the determination to writing. It must be a document which enables a successful party to enforce the award through the Courts if the unsuccessful party does not perform within the requirements of the award. The award is the outcome of a judgement by the Arbitrator where at least two conflicting views have been put to the Arbitrator and the effectiveness of the arbitration hearing is found in the award.

What are the requirements of an award? An award needs to be capable of being enforced in the Court. In order to achieve this, an award must meet the following requirements:

- **Time**

The award must be made and published within the time stated in the arbitration agreement. If no time is stated, then it must be published within a reasonable time;

- **Certainty**

The Arbitrator must state precisely what decision has been reached. It must be clear to the parties what is meant. The time for action needs to be stated.

- **Completeness**

The Arbitrator must answer all the questions submitted by the parties and must not go beyond those questions. Where the parties have not submitted questions to be answered by the Arbitrator, then the Arbitrator has to make determination on the issues, on the evidence put during the arbitration, but must not go beyond those issues;

- **Consistency**

Where there are several questions to be answered the answers must not be inconsistent, ambiguous or contradictory. Ambiguity may arise from the form of questions put by the parties. An Arbitrator needs to be alert and reject such questions;

- **Finality**

Section 23 of the *Commercial Arbitration Act* allows an Arbitrator to make an interim award at any time. If this is done the award should specifically state that it is an interim award. If it not then, the award is final and must leave nothing further to be done;

- **Enforceable**

The award must be legal and capable of being performed.

Unless the parties otherwise agree, the Act requires the Arbitrator to give reasons for decision. In the great majority of cases all anyone will want will be a short statement in a paragraph or so of what the case is about, the contentions on both sides, a summary of the principle findings of fact on the matters in issue and the reasons, stated quite shortly in non-legal language, why the Arbitrator has come down to one side or on the other.



## National Occupational Licensing System

### Property Occupations Interim Advisory Committee

#### Communiqué #4 on Progress

(This paper reflects IAC advice to date and does not purport to outline settled government policy. It is provided for the purpose of communicating progress and responses are not sought at this time.)

#### Introduction

The National Occupational Licensing System (NOLS) is being developed to remove licensing inconsistencies across state and territory borders and provide for a more mobile workforce. Licence holders will be able to perform work in any state or territory with a single national licence. The NOLS will reduce red tape, improve business efficiency and the competitiveness and productivity of the national economy. Initially, four occupational areas will be covered by the NOLS: electrical, plumbing and gasfitting, refrigeration and air conditioning mechanics, and property occupations.

Interim Advisory Committees (IACs) have been established to provide policy advice to the COAG National Licensing Steering Committee in the development of national licensing for each occupational area. The Property Occupations IAC (POIAC) met on a number of occasions during 2010 to develop a series of proposals in relation to:

1. licence categories, scopes of work and licence types;
2. eligibility requirements, both skill based and non-skill based.

A summary of the advice to date of the POIAC follows. Please note that this information is provided on the following basis:

- This advice will inform the policy considerations of the National Licensing Steering Committee and the advice it provides to the Ministerial Council for Federal Financial Relations;
- The policy will be subject to public consultation through a Consultation Regulation Impact Statement (RIS) for this occupation which will be released in the second half of 2011. Following public consultation, a Decision RIS will need to be agreed by jurisdictions through the Ministerial Council;
- The summary represents the majority view of IAC members, noting that a consensus may not have been reached on all policy elements.

#### Current licence holders

The COAG decision to establish the NOLS agreed that all current holders of state and territory licences would be transitioned appropriately into the new licensing structures, with licence conditions if necessary, to ensure that they continue to be able to undertake their current work. The details of these transitional arrangements are still being developed.

#### Background

IACs are comprised of members with a wide range of expertise including in the fields of regulation, industry operations and practices (from both a union and employer perspective), safety, consumer advocacy, insurance (where relevant) and training. Each IAC is assisted in its consideration of policy by the views of an occupation-specific Regulator Working Group, comprising regulators from each jurisdiction.

Advice provided by the IACs will inform the Steering Committee and its development of the proposed regulations for the NOLS. In providing advice the IACs were required to take into account:

- the objectives and principles contained in the *Intergovernmental Agreement for a National Licensing System for Specified Occupations* signed by the Council of Australian Governments (COAG) on 30 April 2009; and

## Property Occupations Interim Advisory Committee – Communiqué on progress

- the eight best practice regulation principles set out in COAG's *Best Practice Regulation: A Guide for Ministerial Councils and National Standard Setting Bodies*.

Where practicable a consistent approach to the development of licence policy has been taken across occupations.

Further background on the NOLS as well as future updates can be found at [www.nola.gov.au](http://www.nola.gov.au)

### **Progress with legislation and the establishment of the National Occupational Licensing Authority**

The *Occupational Licensing National Law Act 2010* (the National Law) was passed by Victoria's Parliament as host jurisdiction on Friday, 17 September 2010, and has so far been applied in Queensland and New South Wales. It is expected that other jurisdictions will pass the legislation by early 2011. The National Law can be found at [www.nola.gov.au](http://www.nola.gov.au).

The National Law establishes the framework for the NOLS and a new body, the National Occupational Licensing Authority (NOLA), which will administer the system. The NOLA Chair and Board are expected to be appointed in autumn 2011.

### **Proposed Licence Structure for Property Occupations**

#### **1. Licence categories and scopes of work**

Following consideration of a range of options for licence categories, scopes of work and licence types for the property occupations, the POIAC has developed a proposal based on six licence categories. The licence categories and their scope of work are shown in Table 1.

Note that where the licensing structure proposed for the national licensing system includes subgroups not currently regulated in a particular jurisdiction (for example, auctioneers), the principles of the *Intergovernmental Agreement for a National Licensing System for Specified Occupations* state that that jurisdiction will not be required to extend its licensing to cover that subgroup.

Table 1: Proposed Work Categories and their Scopes of Work

| <b>Licence category</b> | <b>Scope of work</b>   |
|-------------------------|--|
| Estate agent            | Sale, purchase, lease or management of real property.<br><br>Act in an agency relationship for the sale, purchase, lease or management of real property. An estate agent is not authorised to conduct an auction of real property or act as a strata managing agent or a business agent.   |
| Strata managing agent   | Management of any function of the body corporate or owners' corporation under a strata or community title scheme.<br><br>Exercise any function of a body corporate or owners' corporation in the management of the body corporate or owners' corporation under a strata or community title scheme. A strata managing agent is not authorised to act as an estate agent or a business agent or an auctioneer. |
| Business agent          | Sale, purchase and lease of a business<br><br>Act in an agency relationship for the sale, purchase and lease of a business. A business agent is not authorised to conduct an auction of real property or act as an estate agent or strata managing agent.  |
| Auctioneer              | Conduct an auction of real property.   |



| <b>Licence category</b>         | <b>Scope of work</b>   |
|---------------------------------|--|
|                                 | An auctioneer is not authorised to operate a trust account or act in an agency relationship as an estate agent or business agent, operate a real estate or business agent business, or act as a estate agent's representative or business agent's representative   |
| Estate agent's representative   | Act under the authority of a licensed estate agent in the sale, purchase, lease or management of real property. An estate agent's representative is not authorised to operate a trust account or operate a real estate or business agent business, or conduct an auction of real property, or act as a strata managing agent or business agent's representative. |
| Business agent's representative | Act under the authority of a licensed business agent in the sale, purchase and lease of a business. A business agent's representative is not authorised to operate a trust account or operate a business agent's or real estate agent's business, or conduct an auction of real property, or act as a strata managing agent or an estate agent's representative. |

It should also be noted that the majority of members of the POIAC supported the deregulation of the sale and auctioning of livestock as insufficient evidence of market failure has been identified. This position was strongly opposed by the member from the Australian Livestock and Property Agents Association (ALPAA).

## **2. Licence Types**

The POIAC has proposed that the regulations for property occupations should make provisions for issuing of a licence to:

- an individual; or
- a body corporate.

## **3. Eligibility requirements**

### **a) Skill-based eligibility requirements**

The POIAC has proposed that a skilled-based eligibility should be based on the qualifications or skill sets from the national Training Package (CPP07 Property Services Training Package).

A Certificate IV level qualification is proposed as appropriate for an estate agent, strata management agent and business agent. A skill set is proposed for an auctioneer, an estate agent's representative and a business agent's representative. The POIAC also proposed one skill set for an estate agent wishing to operate as a business agent and another for a business agent wishing to operate as an estate agent.

The majority of members have supported an approach that does not include experience requirements, additional to a properly delivered and assessed competency based qualification.

### **b) Non-skilled eligibility requirements**

The POIAC has proposed a range of non-skilled eligibility requirements include personal probity and financial probity.

## **4. Exemptions and conditions**

The POIAC has proposed a range of exemptions and conditions for the property occupations. These will be covered more fully in the Consultation Regulation Impact Statement which will be released in the second half of 2011.

## Next Steps

The POIAC will continue to provide advice on licensing policy during 2011 including for transitional processes. Draft regulations and a Consultation Regulation Impact Statement for each occupational area will be released for public comment early in the second half of 2011. The public will have 6 to 8 weeks to make comments on the proposals at this time.

### Key dates

|                  |   |
|------------------|---|
| 1 Jan 2011       | Establishment of the National Occupational Licensing Authority  |
| Second half 2011 | Draft regulations and Consultation Regulation Impact Statement released for public comment  |
| End of 2011      | Ministerial Council for Federal Financial Relations to consider finalised regulations and Decision Regulation Impact Statement  |
| Early - Mid 2012 | Regulations to be adopted in all jurisdictions  |
| 1 July 2012      | Commencement of the National Occupational Licensing System for the first four occupational areas: electrical, plumbing and gasfitting, refrigeration and air conditioning and property occupations. |