

Our Ref: PGD/23838
Author: Paul Donovan
Email: pdonovan@mdslegal.com.au

23 December 2011

BY EMAIL: david.jones@accg.gov.au/imogen.hartcher-o'brien@accg.gov.au

Mr David Hatfield
A/g General Manager
Adjudication Branch
Australian Competition & Consumer Commission

Attention: Mr David Jones/Ms Imogen Hartcher-O'Brien

Dear Mr Hatfield

Application for Authorisation [A91280] by the Real Estate Institute of Western Australia (Inc)

I refer to my telephone conversation with Mr David Jones of the Commission on 8 December 2011. During that conversation Mr Jones advised me that Commissioners have looked at the application on a preliminary basis and had three questions. Those three questions were as follows:

1. With respect to the proposed professional development scheme that will be introduced by REIWA should the compulsory scheme presently administered by the Western Australian Department of Commerce be terminated, how does the requirement that members attend 7 hours training compare with current provisions in other States?
2. Why is the 3.5 hours component limited to REIWA being the provider and what public benefit arises out of this requirement?
3. Does REIWA propose that its forms, the subject of the application, will be made available for use by non-REIWA agents/members of the public?

As to these three questions, REIWA responds as follows:

1. Hours required to be spent by real estate agents with respect to education in other States.

NOTICE: If you are not an authorised recipient of this email, please contact MDS Legal immediately by return email or by telephone on 61-8-9325-9353. In this case, you should not read, print, retransmit, store or act in reliance on this email or any attachments, and should destroy all copies of them. This email and any attachments are confidential and may contain legally privileged information and/or copyright material of MDS Legal or third parties. You should only retransmit, distribute or commercialise the material if you are authorised to do so. Any legal privilege attaching to the contents of this email or any attachments is expressly reserved and is not waived by any transmission to an unauthorised recipient.

I have been instructed by REIWA that the requirements in other States with relation to education and the hours to be spent by real estate agents with respect to that education is as follows:

- 1.1 Tasmania - the Tasmanian continuing education program is operated by that State's Property Agents Board. Agents are required to attend 8 hours of a mixture of mandatory and elective training in each annual cycle.
- 1.2 New South Wales - this State's continuing professional development program is operated by the New South Wales Fair Trading Department. Real estate agents are required to achieve a total of 12 points per annual cycle with a mixture of points awarded at a rate of 1, 2 or 3 points per hour depending upon the type of course concerned and the provider of that course.
- 1.3 Australian Capital Territory - the ACT continuing professional development program is operated by the Department of Justice and Community Safety. Agents are required to achieve a minimum of 12 points per annual cycle. 8 of those points are achieved through completing a unit of competency delivered by a registered training organisation. Each unit of competency has a different nominal timeframe, generally between 12 and 60 hours of study. The remaining 4 points required to achieve the minimum of 12 points in total is the equivalent to 4 hours of training.
- 1.4 South Australia - there is no compulsory program in that State operated by a State regulator. A voluntary program exists for members of the Real Estate Institute of South Australia. Members of this institute are encouraged to obtain certification and a minimum of 10 points must be achieved during each annual period. 5 of those points must be obtained through training provided by the Real Estate Institute of South Australia and the other 5 points must be obtained through training that meets the Real Estate Institute of South Australia's definition of consumer protection training. The points awarded for individual courses do not always equate to a set number of hours with, for example, some 2 or 3 hour courses both attracting 3 points. The points allocated to each training course are allocated in the judgment of the REISA and that judgment is based upon the number of hours involved in the course and the depth of content offered by the course.
- 1.5 Victoria - this State's continuing professional development program is not regulated by statute. However, completion of a course approved by the Real Estate Institute of Victoria is a requirement of membership of that institute. Members of the REIV are provided with one free 3 hour course each calendar year that they must attend and, in addition, it is necessary for members to complete one elective course that is approved by the REIV. Those elective courses range from 2 to 7 hours in length. The minimum total hours therefore required in order to comply with the membership requirement is 5 hours.
- 1.6 Queensland - this State does not have a statutorily regulated professional development program but completion of a continuing professional development program is a requirement of membership of the Real Estate Institute of Queensland. This program takes the form of a mandatory training course and then a series of elective courses which

are both required to be completed through the Real Estate Institute of Queensland. The free mandatory training module is usually 3 hours in duration. One elective component is then required to be completed and the length of those electives is at least 2 hours, depending upon the depth and content of the subject matter. Some of the elective options are also free. The minimum total hours required therefore to comply with the membership obligations is 5 hours.

- 1.7 Northern Territory - this Territory does not have a continuing professional development program for real estate agents.
2. Public benefit arising out of the requirement that REIWA be the sole provider of a 3.5 hours component.

REIWA reiterates its submissions set out in paragraphs 5.3 to 5.36 of its written submissions dated 4 November 2011 lodged in support of its application, concerning the public benefit to be derived from its proposed compulsory professional education scheme (**CPE Scheme**).

REIWA reiterates that public benefit is derived from such a scheme in that consumers can be assured that real estate and business agents with whom they deal, if they are members of REIWA, comply with criteria that are designed to ensure agents maintain a high level of expertise and skills.

The requirement for members to satisfy half their CPE Scheme requirements through a course provided by REIWA enables REIWA (which is in a unique position because of its dealings with the regulator and its role in providing information to its members and the public) to ensure that the most pressing and important issues concerning the real estate industry are addressed and that the individuals providing the relevant information have the requisite knowledge and skill to do so. In contrast, REIWA is unable to monitor or control the material that might be provided by other professional development providers.

REIWA's unique position to identify consumer protection and risk management issues that will provide protection to consumers arises out of:

- 2.1 the fact that REIWA has lengthy experience in providing expert training and education for real estate agents (REIWA has provided training services for real estate agents for over 35 years);
- 2.2 REIWA, through its connection with its membership, its involvement in providing consumer advice, its role in advising and conferring with government, its access to legal advice and its relationship with the State regulator, is able to quickly identify and provide education with respect to matters relating to consumer protection and risk management; and
- 2.3 REIWA is able to provide professional development on a cost-effective basis due to its training business unit being a not-for-profit operation. It is preferred that a budget surplus be achieved by this unit each year, the surplus is used to develop new resources and to provide for client demand, particularly in relation to the need to invest in training technology to keep current with new methods of training. In the 2011/2012 budget, REIWA Learning is budgeted to show a deficit to accommodate extra expense incurred through delivery of training through inner and outer metropolitan areas and throughout regional Western Australia. REIWA is the only organization in Western Australia

providing training services on a not-for-profit basis and has the broadest coverage in regional areas.

The current compulsory professional development scheme that is administered by the Western Australian Department of Commerce is administered and partly funded by the Western Australian Government. Three providers, including REIWA, are chosen by the Department with respect to the delivery and presentation of course materials. The three providers are assessed by the Department with respect to the cost-effectiveness of the delivery of their service, the capacity of the entity to deliver course content and objectives and the entity's history of demonstrated quality service provision.

The current system of the provision of compulsory professional development in Western Australia has operated in Western Australia for the past four years.

The Department of Commerce is responsible for implementing and auditing this process. The Department is therefore able to ensure that proper value for money is provided, the entities concerned have a capacity to deliver course content and outcomes and are appropriately qualified to deliver the service. Whilst REIWA is not privy to the cost of the administration and auditing of the services by the Department of Commerce, it is envisaged that the resources needed to conduct these assessments by the Department would be significant, both with respect to manpower and cost.

REIWA is not in a position to provide the auditing and assessment monitoring of course content and course providers that it believes is integral to the delivery of an effective CPE Scheme. Unlike the Department of Commerce, it has neither the financial resources nor manpower to properly supervise other organisations that may participate in the CPE Scheme. On the other hand, REIWA believes that having minimum standards for the delivery of course content and course delivery is integral to the effectiveness of a CPE Scheme.

Therefore, whilst REIWA is able to monitor and ensure the quality of its own course content and delivery, it is not able to do so with respect to other providers.

REIWA provides representation in Western Australia on the Industry Training Council. Its participation in this council has enabled REIWA to observe that there is continuing concern about the quality of training and inconsistency of delivery and assessment by training providers in many industries across Australia. Difficulties in monitoring the provision of these courses in Western Australia can be met to a large degree by the auditing which is performed by the Department of Commerce. However, it is reiterated that REIWA does not have the resources to undertake this auditing.

REIWA's proposed CPE Scheme therefore envisages that the core compulsory consumer protection and risk management component of the education would be provided by REIWA in the 3.5 hours of the training that would be reserved for provision by REIWA.

It should be noted that examples of the types of categories of content that REIWA would envisage would be included in the compulsory core elements of the consumer protection and risk management education that would be provided by REIWA are as follows:

- (a) changes to relevant legislation, for example, recent amendments to the *Residential Tenancies Act, 1978*;

- (b) education concerning consumer protection issues arising out of identity fraud;
- (c) duties upon real estate agents with respect to disclosure of interests and avoiding conflicts of interest;
- (d) education concerning the law regarding misleading or deceptive conduct, including with respect to real estate advertising;
- (e) risk management issues with respect to social media and real estate agents;
- (f) obligations upon real estate agents under the *Privacy Act*, 1988 and the *National Privacy Principles*;
- (g) the effect on real estate of energy efficiency ratings systems;
- (h) skills training with respect to real estate agents preparing special conditions in contracts;
- (i) education concerning procedures with respect to the settlement of contracts, including contracts for the sale of land and contracts where rental properties have been marketed for sale;
- (j) education concerning the terms of the Joint Form of General Conditions for the Sale of Land;
- (k) training with respect to the completion and drafting of standard offer and acceptance contracts;
- (l) education in relation to risk and safety issues that arise out of the duties of property managers;
- (m) education concerning issues connected with human resources, including dealing with employment contracts and applicable industrial awards;
- (n) education with respect to appropriate behavior when dealing with consumers.

However, REIWA also wishes to enable its members to have the ability to seek non-core education services from entities outside of REIWA. For example, sales representatives may wish to include as part of the balance of their total of 7 hours course content, education with respect to sales techniques or personal development. Such courses may not be within the scope of services provided by REIWA and it is thought that it could be advantageous for members to be able to obtain those electives from third parties.

Ultimately, REIWA has sought to strike a balance between its provision of core consumer protection and risk management education (that it does not have the capacity to audit if other providers are involved) with the desirability of having non-core elements of education provided by, potentially, third party providers. REIWA has therefore concluded that an annual 7 hour program, with 3.5 hours dedicated to core consumer protection and risk management courses and 3.5 hours of electives to be provided, potentially, by third parties, to be an ideal balance.

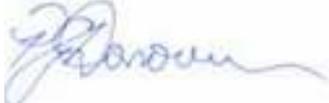
The total time required to be spent by members to obtain the accreditation (7 hours) also strikes a reasonable balance between not being overly taxing upon the commercial operations of real estate agents while providing the necessary education that REIWA considers will provide significant public benefit. The total hours that will need to be spent by real estate agents in Western Australia in participating in the CPE Scheme is commensurate with the total hours required in education schemes conducted in other States and Territories in Australia.

3. The availability of REIWA exclusive agency forms to non-REIWA members.

The forms that are the subject of REIWA's application for authorisation are exclusive agency authority forms. REIWA proposes that its standard exclusive agency agreements that are the subject of the application will be made available for purchase from REIWA by non-REIWA members (see paragraph 9.2 of the submissions dated 4 November 2011).

Should you have any queries or require any further information concerning REIWA's application, please do not hesitate to contact me or Gabriela McLean.

Yours sincerely



P G DONOVAN
Director
MDS LEGAL

Please note that our office will be closed for the Christmas break from 12.00 pm on Friday, 23 December 2011 until 8.30 am on Tuesday, 3 January 2012