

REIV's response to the Regulatory Impact Statement

Draft Estate Agents (Education)
Regulations 2020

AUTHOR: G King

VERSION: 0.1

DATE: 9 September 2020



REIV

INTRODUCTION

The Real Estate Institute of Victoria (REIV) is the peak professional association for the real estate industry in Victoria.

Our members specialise in all facets of real estate, including residential and commercial and industrial leasing and sales, auctions, business broking, buyers' agency, property management, owners' corporations and valuations.

REIV represents more than 80 per cent of these professions.

These businesses employ more than 15,000 people in Victoria in a market that handles around \$76 billion in transactions totalling 20 per cent of GSP.

GENERAL COMMENTS

The Real Estate Institute of Victoria (REIV) opens our response to this Regulatory Impact Statement (RIS) with the observation that most of the narrative in the document was unnecessarily included, and biased against the real estate profession.

In light of the commentary on the real estate profession the REIV has adopted a slightly different approach to its response to the RIS. In essence the REIV has sought to address some incorrect assertions and ill-founded statements particularly as they pertain to the perception of the real estate profession.

RESPONSE TO THE RIS

1.2 Problem analysis

The opening comment in **section 1.2** asserting that if “...*the real estate sector were to self-regulate their own training, some agents are likely to fail to undertake the necessary standard of training required to ensure their competency*”, is laughable in light of the history of these proposed changes. Furthermore, this sentiment is repeated further in the same section thus. “*A self-regulated real estate services sector is likely to increase the number of inadequately trained property managers.*”

While the REIV understands the rationale behind the development of an RIS and the creation of a base case, the notion of deregulation would never be in play here and it is likely that the government would have merely duplicated the existing regulations and kept the status quo. Our objection is primarily in relation to the direction taken in the drafting of this document and the apparent amnesia regarding the development of these proposed regulations.

The REIV reminds the Victorian Government, while making a public statement in this document, that Consumer Affairs Victoria was brought kicking and screaming to the table with the consultants for the Federal Government (Artibus) to discuss the new training package. The then Deputy Secretary, Regulation and Director of Consumer Affairs Victoria, Mr Simon Cohen and his staff showed absolutely no interest in advancing the professional standards of real estate agents and was more interested in targeting historic minor breaches of underquoting laws that were not yet in place at the time of the said conduct.

As early as 4 July 2018 the REIV wrote to Mr Cohen on this issue. Following are some key excerpts of that correspondence:

“The current situation is that regulator feedback from all states, except Victoria, supports the package reform. Should Victoria continue to refuse to endorse the package, it will be submitted to the Australian Industry Skills Council with an exception report.”

“I raised my belief ... that Consumer Affairs Victoria had not specifically indicated its objection to the proposed package; you indicated that it was your belief it had. I have now again checked with Artibus and can confirm my understanding that there has been no formal response from CAV on its issues with the proposed training package. This is despite multiple opportunities in individual and group settings both face-to-face and via teleconference to ascertain exactly what the concerns are. The only feedback has been verbal, (as I indicated in the meeting last week) and this has been to the effect that “this will not work for Victoria”. I am informed that when asked for details, none have been forthcoming.”

“I have grave concerns as to why, in the face of a national push for training package reform, the dialogue with the REIV around this issue has been scant at best. I am also concerned as to the motives for rejecting the package from the outset, as well as the hesitant involvement of CAV to be better informed. Such was the hesitancy of CAV to be involved, following our meeting (with Artibus) in your office on 12 February 2018, it was my suggestion to Artibus to hold their next regulator meeting in Melbourne to ensure CAV’s participation. While I was not able to attend the meeting, my representative attended in my stead and reported to me what he described as extreme negativity on the part of your attending officer.”

The REIV also reminds the Victorian Government that in order to get the new training package over the line, we were forced to ‘skirt around’ our own regulator and have the packaged endorsed through another Ministerial office.

As recently as 20 March 2020 the REIV wrote the following to the Hon. Marlene Kairouz, (then) Minister for Consumer Affairs; excerpts as follows:

“We [REIV] see all too often that Registered Training Organisations (RTOs) offer full license qualifications for licensed agents in extremely short timeframes and at a ridiculously low price point. It is clear from even the most cursory examination that these RTOs cannot deliver the standard of entrant the profession deserves and the government expects, and yet they continue to offer these qualifications unimpeded.

The level of Certificate IV to be an estate agent is, in our considered opinion, too low. Furthermore, the requirement of a five-day course (if done through REIV) or one- or two-day course offered by some dodgy RTOs (amounting to three units of the Cert IV qualification) is not sufficient for agent representative entry. One has to worry that an agent’s representative could be working within two or three days of commencing a course through one of these ‘discounted’ courses. While the REIV considers the new training package will be an improvement on the existing qualification, in the absence of real oversight of the standard of delivery of training and in the absence of a robust disciplinary process regarding conduct, our attempts to raise the standard of the real estate profession are hindered.”

This correspondence went on to recommend that REIV play a greater role in ensuring the standards of entry into the real estate profession. Not surprisingly, this letter has not been responded to. It does however go to thwart the suggestion of the opening line in section 1.2 of the RIS. In fact, were it not for the sector struggling against the tacit repression by its own regulator, standards would have remained below that of the rest of Australia.

Furthermore, the inclusion of the second dot-point in **section 1.3** of the RIS is unnecessarily and inappropriately stated. It has no doubt been included as part of the landlord/agent ‘bashing’ that has become commonplace, focussing the blame for disputes, hearings and leasing difficulties on the supply side rather than recognising or even acknowledging that there are two sides to the rental ‘coin’.

1.5 Preferred option

The REIV supports the two preferred options outlined in section 1.5 of the RIS as follows resulting in students being awarded a Certificate IV for successful completion of the agent's representative course of instruction and a Certificate IV and a Diploma for successful completion of the estate agent course of instruction:

- Option 3 for the agent's representative course of instruction
This option prescribes 18 Certificate IV units, which include all five core units; all five units from Group A residential property sales; all five units from Group B residential property management (excluding the two duplicate units from Group A); one unit from Group D auctioneering and two units from general electives. A second less desirable option would be to allow students to choose their own electives.
- Option 3 for the estate agent course of instruction
This option prescribes 22 Certificate IV units and 12 Diploma units. The Certificate IV units include all five core units, all five units from Group A residential property sales, all five units from Group B residential property management (excluding the two duplicate units from Group A), all three units from Group D auctioneering and four units from general electives. The Diploma units include all seven core units and any five elective units.

The REIV is aware that there may be some resistance to the four additional Certificate IV units as part of the estate agent course as outlined in Schedule 1 of the Draft Regulations. From an altruistic viewpoint, the REIV supports a clear delineation of the qualification for an agent's representative and that of an estate agent and also supports the inclusion of those four additional units.

The REIV has been asked to consider which four units could be removed to reduce the course load from 22 to 18. Whilst not ideal, CPPREP4163, CPPREP4501 and CPPREP4504 could be removed however we struggle to identify an additional unit to be removed. It would be unpalatable for the REIV if a full course for a licensed agent did not include CPPREP4162 - Conduct and complete sale by auction. This seems to be the only other option to those three highlighted in green below. This is the reason for our support of the 22 Cert IV units for the Licensed Agents and then the Diploma qualification.

1.5.1 Cost of Preferred option

The REIV notes the estimated costs to students and highlights the substantial variance in the lower bound cost and the upper bound cost. This is an issue that pervades the training space generally, not only in relation to real estate courses. Properly functioning and good quality RTOs regularly compete against and battle with the cheap and inadequate end of the training market.

It is not uncommon to see advertisements for agent's representative courses and real estate license courses being offered at a cost and duration that is completely unrealistic. This is not a matter of competition or flexibility; it would be simply impossible to deliver the course material to enable students to achieve the desired competencies. This impossibility is reflected in the cost of the courses and the short timeframes advertised.

Reporting of these 'dodgy' providers (and that adjective is used advisedly) seems to go unactioned. One of the other major issues, apart from the unsustainable cost and unrealistic course duration, is the fact that many providers operate on-line courses from outside of Victoria with their course material being so generic as to lose any relevance for State-specific legislation. It is for this reason the REIV proposed to the former Minister, that we could play a bigger role in the licensing process.

The following is an extract from the REIV's 20 March 2020 letter to the (then) Minister (noting that no response has been provided).

"I believe the REIV should be empowered to review potential licensees through a form of 'sign off' or 'accreditation' of the training qualifications they have attained and advise the licensing body (BLA) that we consider the individual suitable for licensing."

The REIV also suggests that the assumption in the RIS that "...employers will pass on the costs of withdrawal time to consumers" is a worst-case scenario. The real estate profession is generally very supportive of training and development. It is highly likely that a large portion of the withdrawal time would be subsumed into the ordinary cost of running the business.

Furthermore, the estimated one-off course development costs calculated in the RIS does not reflect the fact that there are existing training packages available for purchase with that cost and the requisite jurisdictional development costs being substantially lower than the estimation.

1.6 Implementation

The REIV is uncertain as to what is meant by the statement that “CAV will ensure that agents and their representatives comply with the new regulatory requirements through its existing monitoring and enforcement activity, which it undertakes as part of its general day-to-day operations.”

REIV would argue that there is very little for CAV to do in enforcing the regulations once made, as this then becomes a matter for the training regulator rather than the regulator of the profession to oversee.

2. Background

2.1 Victorian real estate services industry

The REIV notes the reference in this section to the IBISWorld research which was undertaken prior to the current Covid-19 pandemic situation. The present circumstances negate the accuracy of research such as this. Population growth is unlikely to increase at the pre-pandemic rate and property prices are likely to remain stable with lower rates of growth than may have been anticipated during the research period. The REIV does however note the exception clause in the RIS regarding the Covid-19 impact on the government’s multi-criteria analysis.

The REIV also notes the number of licensed estate agents recorded on the Business Licensing Authorities register and advises that there are large numbers on that register who do not practice their profession. There seems to be no analytical work done by the licensing authority or CAV, to determine the practise-level of those appearing on the register.

2.2 Real estate services industry: regulation and imperfect market

Imperfect market

The REIV notes that data from CAV as to the number of enquiries, while categorised as the first stage of the complaints process actually has no correlation to the complaints process. It is well documented and recognised that CAV records all contacts, regardless of its nature or source, as an enquiry. It is therefore an overstatement to equate the number of enquiries as anything other than enquiries unless there is some material way to differentiate or categorise the contacts.

It should be noted also that many of these enquiries come from agents themselves noting that Tenants Victoria has indicated to REIV that it considers the CAV website to be a support for landlords and property managers rather than for tenants. It is therefore a further overstatement to categorise the number of enquiries as originating from complainants.

The REIV notes the curious comment at paragraph 2 which notes that renters are negatively affected by an agent's behaviour and cannot choose to remove the agent. The agent is engaged by the landlord, not the tenant. The agreement is between the tenant and the landlord, not between the tenant and the property manager. In such circumstances it would be inappropriate to empower the tenant to remove the agent/property manager.

The REIV contends that from case studies we have gathered from our Members, it is more likely that a tenant would be the party that needs to be removed from the relationship. Unfortunately, it does not support the government's rhetoric to collect data on issues relating to tenant behaviour and therefore it falls to the supply side to retain those records.

It is perhaps indicative of the reference to research at footnotes 10 and 12 derives from the *'Regulation of Property Agents Working Group Final Report, July 2019'*. This is a UK report and has little if any relevance to the real estate profession in Australia, let alone in Victoria.

The REIV also take umbrage at the use of the language around the data purporting to provide an "...*indication of the prevalence of substandard agents in Victoria.*" If one was to calculate the number of 'general warning letters' given to agents compared with the number of agents on the BLA register this would equate to between 1% and 2% annually. If one was to factor in the number of transactions annually the use of general warnings against property transactions would be miniscule.

4. Problem analysis

4.1 Establishing the base case

While the REIV accepts the need to establish a base case, we are somewhat bewildered by the proposition put that if the regulations were allowed to expire, they would not be replaced by some form of regulation stipulating qualifications at some level. In effect, we are not aware of any regulations requiring qualification in a regulated industry being allowed to lapse without some replacement, at least to the same level of qualification as that to be superseded.

Deregulation of education qualifications for real estate agents is in our opinion an highly unlikely outcome and contend that the base case, had the new training package not been adopted by Victoria, would have been the status quo of that in the existing regulations.

4.2.1 Costs associated with a poor industry reputation

The reference to the 2017 Roy Morgan Image of Professions Survey and its placement of real estate agents in a misnomer. The REIV contends that it is the nature of real estate work and its remuneration model that accounts for the ranking outcome rather than the level of education requirements. We do however concur that the current education qualification requirements are too low and need to be raised.

4.2.2 Risks to vulnerable tenants from substandard estate agents and agents' representatives

The reference in this RIS to the unqualified opinion of Tenant Union Victoria is, as stated previously, unjustified and inappropriate. The inappropriateness is exacerbated by the inclusion of case studies referencing isolated incidents at the far left hand side of the representative 'bell-curve'. At no rational level is TUV qualified to evaluate the competence of property managers. The use of 'Case Studies' embedded in the RIS is the worst and most flagrantly jaundiced approach to a regulatory document imaginable.

The biased and inaccurate evaluation of the property management sector by TUV (now renamed Tenants Victoria) is evidenced by their histrionic commentary on the sector during the current COVID-19 pandemic. Their CPLR submission as referenced in this RIS is clearly biased and derived by the perception of a group that predominantly deals in complaints and disputes forming their belief that their daily caseload is indicative of the norm. The professional work by the vast majority of property managers (and to that point real estate agents generally) does not come to their attention resulting in this jaded perception. Generalisation is a flawed assessment when only one end of the spectrum is being examined.

Question

What is the nature of the relationship between the level of training received by agents' representatives and estate agents and the incidence of complaints against them, and what factors help shape that relationship?

REIV response

The level of training for agent's representatives is manifestly inadequate. It is widely understood that the majority of training and upskilling for property managers occurs in the workplace rather than in the classroom. A raising of the level of training for agent's representatives will enable a more 'job-ready' employee at the completion of the training. As with most qualifications however, it is likely that there is no substitute for practical training. This is more effective if the recipient is in possession of greater knowledge through a course of instruction.

The qualification to become an estate agent by comparison is more satisfactory, however it is still considered to be inadequate for the purpose of higher professional standards. A Certificate IV level is too low a qualification for the responsibilities placed on individuals in such a demanding and regulated profession.

Question

Is it likely that a decrease in complaints will be accompanied by a decrease in disputes?

REIV response

It is not possible to answer this question with any certainty. Complaints originate from a variety of sources, some of which are not founded in fact or logic. Disputes generally arise because of a desire for different outcomes by individuals and both viewpoints can be correct or incorrect as to fact and circumstances.

6.1 A streaming system will not be incorporated into the course structure

After due consideration the REIV supports the decision to not incorporate a streaming system into the agent' representative or estate agent qualification.

6.2 A restricted licensing scheme is not within the scope of this review

The REIV is disappointed that a restricted licence scheme is not considered at this time and considers that this is a consequence of the 'late arrival' of the government to support the training package hence making the requisite changes to the Act unachievable in the allotted timeframe.

6.3 Continuing professional development is not within the scope of this review

The REIV accepts that the introduction of CPD is not in the scope of this review but urges government to consider this option as a priority.

6.4.2 Options: Agent's Representative course

The REIV supports **Option 3: Prescribe 18 Certificate IV Units** - Candidates must complete 18 Certificate IV units comprising of the 16 units in Option 2, as well as one unit from Group D (Auctioneering) and one additional general elective unit.

6.4.3 Options: Estate Agent course

The REIV supports **Option 3: Prescribe 22 Certificate IV units and 12 Diploma units** - Candidates must complete the 22 Certificate IV units referred to in option 1, as well as 12 units from the Diploma (comprising the seven core units and five elective units). Candidates are free to complete any five elective units from the Diploma.

7. Infeasible Options

7.1.1 Base Case – Letting Interim Regulations sunset without replacement

The REIV agrees that the base case that would allow the current regulations to sunset without replacement is not acceptable and makes no further comment in relation to the options discussed under the Infeasible Option section of the RIS. We note that at no time has the REIV considered this to be a realistic option.

8.1.4 Impacted stakeholders

RTOs

One-off course development costs and registration fees are inbuilt into the business case assessment of the appropriate fees charged to students. This is not the predominate cost however and if amortised over the life of the training package it arrives at a low cost. The predominant costs are trainers fees, IT maintenance and overheads.

What is not discussed in the RIS is the ongoing development of the course material given the regular legislative and regulatory changes introduced by government in various property reviews. For example, the substantial changes that will be brought into play by the Residential Tenancies Amendment Act 2018, if mirrored in other real estate related laws, would require significant re-writing of course materials.

Employers

The quantification of ‘withdrawal hours’ (time off work to study) provided by employers is difficult. Generally, the profession is supportive of upskilling its workforce. It is not a ‘given’ that employers would pass on the cost to consumers and it is considered this approach would vary substantially from employer to employer.

While ‘withdrawal hours’ are likely to be substantial for a non-qualified person to obtain an agent’s representative qualification at (say) the recommended 18 subject Certificate IV, it is less so to graduate to the Diploma qualification. That is to say, it is less of a ‘jump’ than it currently is from agent’s representative to licensed agent.

Consumers

The intention to increase the agent’s representative qualification requirements from three units to a full Certificate IV (18 units) is 100% supported by the REIV. There should be a formal qualification for an agent’s representative and REIV’s view is that the minimum level should be Certificate IV.

As to the probability of entrants into the workforce reducing substantially, the REIV considers that currently many people with no intention of working in the real estate profession undertaken and complete the Agent’s Representative course. Apart from eliminating the ‘tyre-kickers’, the raising of the bar to Certificate IV level for agent’s representatives achieves two significant outcomes:

- Only those people who are seriously considering a career in real estate will pursue the qualification.

- Promotes the qualification as something worthwhile and tangible to achieve to enable the person to work in real estate. Currently, the course does very little to make a person 'job ready' or equip them to undertake the work of an agent's representative – with most learning 'in the workplace' (We know this happens in other fields but it is especially so for real estate where is broadly acknowledged that the 3 units is of little value).

On one hand the REIV considers that the 18 units in the Draft Regulations, while a huge leap from 3, encompasses the minimum training requirement for the role.

While there may a reduced number of students studying for an agent's representative qualification we consider it unlikely that we would see a significantly reduced supply of entrants into the profession. Any small drop in numbers would be more than made up for in quality of persons entering the workforce. Additionally, many more enterprising persons that have the Certificate IV qualification as agent's representatives will be motivated to do the 'lesser jump' upgrade to Diploma (and the 4 extra Certificate IV units) to become an estate agent.

The REIV considers it unlikely that more rigorous qualifications will reduce the number of qualified agents operating in Victoria and agrees with the assumption in the RIS. What is likely to occur is that the agent's representative course will no longer be a 'short course' option taken up by many with no intention to work in the real estate sector.

The REIV also agrees that higher qualification standards will make the profession more attractive to those seeking a career.

Question

Do you agree or disagree with the arguments outlined in section 8.1.4 regarding the impact more qualifications will have on the number of qualified agents operating in Victoria?

REIV Response

Refer to our comments above.

8.1.5 Quantitative analysis results

The REIV considers the analysis in this section of the RIS to be comprehensive and makes no recommendation for change or addition.

8.2 Multi-Criteria analysis

The REIV supports the approach taken in undertaking the Multi-Criteria analysis and following a comprehensive review of the various criteria and options takes no issue with the findings and conclusions.

8.4.1 Funding for Certificate IV level units

The REIV supports the proposed funding for Certificate IV level units for the agent's representative course acknowledging that no funding will be available for the additional 4 Certificate IV units in the licensed agent's course.

8.4.2 Funding for Diploma level units

The REIV welcomes the intention to fund the Diploma level units and recommends that funding for this higher qualification be commensurate with current funding for the Certificate IV qualification.

8.4.3 Government funding for course development

The REIV does not consider funding for initial course development is necessary however substantial legislative and regulatory change should be supported by funding to bring course materials up to date.

9.4. Impact on RTOs

The REIV has read Clause 7 of Schedule 3 of the Draft Regulations to mean that from 20 October 2020 the course of instruction for the award of CPP40307 cannot be commenced. However in discussions with the Department it appears that the course can be commenced as long as it is completed by the end of the teach our period in September 2021.

The REIV has noted that there is no similar reference to a commencement date in Clause 5 of Schedule 4 of the Draft Regulations.

Having considered all options the REIV recommends that any course of instruction does not need a “must start by this date” timeframe and that the course of instruction for the awards would need to be concluded and attained by the September 2021 teach out date. This would allow flexibility of the commencement, and therefore the completion of the courses of instruction to be managed by the RTOs.

10. Implementation plan

Stakeholder communications and education

The REIV supports the commencement date of 21 October 2020 and the proposed stakeholder communication and education plans as outlined in the RIS.

Compliance and enforcement

The REIV supports the proposed methodology to ensure compliance.

11. Evaluation strategy

The REIV supports the proposed evaluation strategy as outlined in the RIS.