occupational licensing – educationAL reforms for property licensing

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# Abstract

*In the profession of property agency, the need for occupational licensing is widely used in Australia and also overseas. In particular the property sector in NSW has been regulated for over 120 years. The mishandling of trust money is a criminal offence and this is usually accompanied by a jail sentence. Additionally non ethical behaviour such as the agent acting negligently or breaching the duty of care to their principal is also considered a breach of the law. In this regard NSW Fair Trading will take disciplinary action against the agent according to the severity of the breach. The aim of this research is to provide an introductory overview of trust fraud over a 20 year data set, analysed pre and post 2003 to determine if changes in educational requirements introduced in 2003 were a contributing factor accounting for the increase with misappropriation of trust fraud. The findings identified a total of 140 instances of fraud, involving 171 individuals. An analysis of the pre and post 2003 fraud activities, i.e. the 15 year subset within the larger 20 year data set, indicated that a higher percentage of individuals who obtained their licence from 2003 were involved in the fraud instances occurring between 2003 and 2017. The data from the 15 year subset showed 45.54% individuals were licenced prior to 2003 and 54.46% individuals were licenced from 2003.*

Keywords: Consumer Protection, Education, Occupational Licensing, Property Agency, Real Estate Agent, Regulation, Trust Accounting,

**INTRODUCTION**

The property industry has undergone many changes due to innovative planning laws, multi-storey apartment dwellings and the general changing nature of society. This includes the needs of consumers with transactions such as seeking rental and permanent accommodation, and the desire to purchase and/or sell property to satisfy the necessity for shelter and/or investment.

Licensing of property agents in Australia is regulated under the auspices of individual state and territory Offices of Fair Trading. For many decades pre 2003, the 1941 legislation Auctioneers, Stock and Station and Real Estate Agents Act and later renamed to the 1994 Property, Stock and Business Agents Act oversaw the legislative requirements for the property industry. However the legislation was considered too outdated and did not meet the needs of various industry and consumer groups, and again the primary consideration related to enhancing consumer protection. Therefore, the new legislation, known as the Property, Stock and Business Acts Act 2002, and the 2003 Regulations to the Act (PSBA Act 2002) were passed through parliament.

**Property, Stock and Business Acts Act 2002**

When the bill for the PSBA Act 2002, was initially introduced to Parliament in 2001, the intention was “...take the regulation of property services in NSW over the threshold of the twenty-first century. ...far-reaching and innovative proposals, which raise consumer protection to a level that recognises the importance of property transactions in people’s lives” (Parliament 2001:19862).

However, the 2001 bill proposed changes to the overall educational requirements, with only entry-level competencies and the abolishment of mandated industry experience. Therefore, the more flexible competency approach for educational standards was introduced.

In 2002 when industry and parliament were debating these changes to industry experience and educational qualifications the genuine intention had been to remove entry barriers associated with occupational licensing and streamline the licensing process. It was also highlighted that due to the changing nature of the industry, Continuing Professional Development (CPD) was an important addition to educational requirements. Furthermore, this was the norm in many other industries, to utilise CPD as a mechanism for maintaining up to date knowledge.

There were further discussions and minor changes within Parliament relating to these issues, with the bill passing approval in 2002, but enforceable on the 1st September 2003, when the regulations to the Act were finalised. However, the well-intended approach with changes to industry experience criteria and educational qualifications appeared to have adverse implications during the last two recent decades. Trust accounting fraud continued to increase, and particularly from this time frame when educational requirements and industry experience were changed. For instance, a profound negative impact on consumer protection resulted with claims on the compensation fund totalling $362,400 for the year 2003, and escalating to a record $2,400,00 during the year in 2016. (Fair Trading NSW 2003, 2016)

Subsequently, as a result of continuous intense lobbying by community groups and professional bodies, in 2015, the government formed an independent panel to assess the educational training standards for the property industry and determine the necessary improvements. The recommendations from the panel included changes for licence categories, educational standards and work experience (NSW Fair Trading 2016a) which consequently informed the reform proposals released later in 2016 by Fair Trading NSW.

**Reform Proposals**

These reform proposals were detailed in the 2016 Real Estate and Property Services Industry Reform paper. The reforms were aimed to improve the property industry, highlighting issues such as skills, streamlining licenses, overhauling educational requirements and generally raising the profile of the profession to a higher standard. This reform paper made reference to the panels’ March 2016 report, “… that the major function of educational standards should be to protect the public and that mandatory training can be supported where the benefit of reducing the risks outweighs the costs to business.” (NSW Fair Trading 2016b:12).

**Educational Impact**

The proposed reforms were significant to the extent that twelve (12) months practical experience was introduced as a pre-requisite criteria. Additionally, evidence of the work experience had to accompany the licence application submitted to NSW Fair Trading. The evidence aspect was considered very important as the applicant was required to specify the competencies achieved during the twelve (12) months practical experience. This was to incorporate a range from activities from sales processes to property management. Interestingly this turnaround was a relapse back to the pre 2003 legislative changes – although the industry experience during that time frame stipulated 24 months practical industry experience whereas the latest reforms were only mandating twelve (12) months practical industry experience.

The panel review report had also noted that additional training incorporating business management for licensees-in-charge was recommended, and noted this was necessary “… because it formed the view that there is a direct link between business failure and trust account defalcation. The review considered that licensees in charge should hold a diploma qualification”. (NSW Fair Trading 2016b:14). Therefore, very significantly, industry experience and diploma qualifications – both of these were mandated prior to the 2003 implementation of the PSBA Act 2002 legislation – were proposed to be reintroduced for occupational licensing.

### Property, Stock and Business Agents Amendment Act 2018 (abbrev.)

The 2017 bill with the recommended reforms, was eventually passed through Parliament on 7th March 2018. However, it was not until 18 months later, that NSW Fair Trading held public consultation for the implementation and grandfathering transitions for the newly appointed reforms (Parliament (b) 2019).

Subsequently, during 2019, Fair Trading completed the regulations to the 2018 Act and on the 23rd March 2020, the new legislation and regulations were introduced. The PSBA Act 2002 underwent a name change and is known as the Property and Stock Agents Act 2002 (PSA Act 2002). Similarly, the accompanying regulation is known as the Property and Stock Agents Regulation 2014.

The PSA Act 2002 changes included new licence categories, audit requirements, educational qualifications and transitional requirements. Nevertheless, whilst COVID-19 greatly impacted on all aspects of society in 2020, the 23rd March 2020 represented a turning point for the property sector with these changes. It had taken key stakeholders approximately five (5) years of constant lobbying, for the industry to reach this much needed milestone.

The aim of the research is to provide an introductory overview of trust fraud over a 20 year data set, analysed pre and post 2003 to determine if changes in educational requirements introduced in 2003 were a contributing factor accounting for the increase with misappropriation of trust fraud. Therefore, the main purpose and objective of the research will be to undertake an analysis of the changes in the educational requirements for property agency licensing, and map the data against a document analysis of public records, such as court cases and enforcement notices relating to the misappropriation of trust account funds. Due to the complexity of each jurisdiction mandating varying compliance for trust accounting records and procedures, the research focuses on the legislative requirements and data for the state of New South Wales only. However, comparisons within Australia and overseas, are provided where this is relevant. The first part of the research discusses the literature relating to occupational licensing and educational requirements. The paper continues with the analysis and discussion of the main concepts emerging from the 20 year data set linked to the educational requirements for pre and post 2003.. The conclusion summarises the findings.

# LITERATURE REVIEW

It can be said that regulation of any industry requires a control mechanism from the regulator. In the case of occupational licensing, there does appear the trend to use educational requirements as the vehicle to determine acceptance of a licence.

Similarly, in Australia, during the last 60 years, various occupational licenses including the property industry, have gradually introduced formal educational requirements as a pre-requisite for occupational licensing and in the last fifteen years legislation has been introduced to incorporate mandatory CPD. Therefore, whilst occupational licensing is generally considered a form of regulation, this is usually accompanied by minimum standards of educational qualifications and entry conditions such as industry experience.

### Education for occupational licensing – does this benefit the consumer?

Education is acknowledged as a benefit for the consumer and provides better standards of service and expertise (Rudolph 1998). There is also evidence internationally which endorses compulsory education associated with technical knowledge, such as relevant laws (Oladokum & Olatoye 2011). Similarly, in New Zealand, where it is considered that there is a “…more sophisticated, better-educated profile of vendors and purchasers…”, the market demands advanced agents’ qualifications (Crews 2004:1).

Questions have arisen over the content of educational requirements. For instance, does the trust accounting fraud relate to lack of educational knowledge and inadequate monitoring and reviewing of trust account procedures? (Office Fair Trading 2008b). Furthermore, the occupational licensing requirement is coupled with stringent rules associated with the record keeping of trust accounts. Therefore, the educational aspect and appropriate industry experience is considered necessary to strengthen consumer protection.

Similar educational requirements are mandated in the U.S. where real estate agents must be licensed. However, there are different regulations and educational standards within each state. Research from the various states in the U.S. (Barker 2008), indicates the hours of licensing educational tuition can range from 35 hours to 840 hours.

Whilst the U.S. does have high educational standards and expectations, researchers have focused on the entry barriers, such as the educational requirements and the consequential impact for the labour economy; and omit any discussion considering the misappropriation of money in a property agents office (Barker 2008). Similarly, the consequential punishment for the offender, and whether or not the relevant themes are addressed in the educational curriculum for real estate agents is not included.

Therefore should other qualities such as ethics and integrity be considered? There is also evidence to suggest that agents have a conflict of interest and ethical considerations with their clients’ property agency transactions. For instance, in the USA, Young (2011) identified the fact that agents were acting on behalf of a vendor wishing to sell their property, whilst simultaneously advising potential homebuyers for the same property.

However, education is one part of the equation, with consumer confidence and perceptions of the real estate agent coming under scrutiny in a 2010 study in Nigeria. In this regard, the researchers examined consumers’ perceptions on real estate agents, and concluded that consumers rated agents’ ethics as average (Agboola et al. 2010). Additionally, the longer the consumer was dealing with the agent, it appeared that the consumer developed a higher opinion of the ethics evident within the individual real estate agent.

Within these thought parameters, Brinkmann (2009) researched the ethics of Norwegian real estate agents and suggested action research as a method to add professional ethics to the agents’ agenda. For instance, a recommendation was to provide an environment for the agent to critically self-evaluate their involvement within a variety of business transactions. This trigger mechanism on self-reflection would focus on the sensitive issues which contained moral conflicts relating to the discharge of their daily duties. In parallel, this self-reflective process could be adopted for CPD topics.

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### Compulsory Education Diminishes – NSW Overview

In New South Wales, the historical progression for compulsory education in property related licence categories was identified from the 1960’s as part of the licensing regime. During the next 60 years, there have been varying requirements for education and the level of attained qualifications.

Initially when compulsory educational requirements were introduced in the late 1960’s there was minimal course work requirement and a six month part-time course at TAFE was introduced which covered basic subjects of accounting and agency practice. During the 1970’s the changes implemented ranged from an increase with the hours allocated for class attendance – this increased to 18 months part-time attendance - and the introduction of a more formal course content, such as relevant agency laws, conveyancing laws and trust accounting, with the course continuing to be available at the government TAFE colleges. During the 1990’s the TAFE attendance requirement increased to two years part time, and by the early 2000s, the course increased to three years of part time study. Similarly, the level of qualification increased from a certificate course to a diploma course.

However, from approximately 2007/2008 the competency-based assessment approach was introduced, and the concept of recognition of prior learning (RPL) was accepted. Previously prior learning acceptance was required over a ten year solid work experience time frame and then only for selected subjects. However, this changed in the 2007s and onwards with educational qualifications able to be completed within six weeks of full time study – which was a definite change from the three year part time attendance requirements. This shorter time frame was the result of other training organisations involved in the delivery of the property agency licensing courses and implementing RPLs to the extreme. Thereby this enabled fast tracking of the course completion and as consumer competition increased, the completion of the licensing courses shortened (Antoniades 2013b; Antoniades and Eves 2013).

The accounting components also underwent changes, with the elimination of the basic accounting processes, relating to the operations for the property agency business, and the correct accountability and maintenance of trust funds. This approach was different when compared to the early 1990s when the topic of accounting was covered in more depth with separate subjects involving the financial and business management of running the agency practice, plus the correct procedures for trust accounting.

As noted by NSW Fair Trading 2016b:14, the removal of business management from the educational requirements was cited as a cause for business failure and trust account misappropriation. Additionally, TAFE was the major Vocational Education and Training (VET) provider of approved property occupational licencing courses, and TAFE held state wide exams for many of the core subjects, including the accounting modules. This was a good approach as the process strengthened consistency with the standard of exam questions and the depth of the topic content delivered to the students. However, the VET sector was undergoing major changes, and coupled with the diminishing educational qualifications for property agency licensing, the industry unknowingly entered into a phase of trust account misappropriation that would have been unconceivable decades earlier.

**Community Concern with Diminished Educational Criteria**

The Real Estate Institute expressed concern that consumer protection was violated, due to the ease in obtaining a real estate licence. This led to the institute calling for an increase to the entry level training from four subjects to eleven subjects noting that, “Having a licence doesn’t necessarily mean you are a competent real estate agent.” (Northern Star 2014:6). This was further supported in the same media release by the NSW Fair Trading Minister Matthew Mason-Cox “…has issued a blunt warning to agents old and young. Do not be mistaken, to misappropriate this money is fraud and agents can find themselves in prison if they break the law.” (Northern Star 2014:6).

The consumer awareness with the lack of agents’ education standards continued into 2015, with Mr Cunningham the president of the REI stating “The barista who makes your coffee has had more training than many real estate agents who are entrusted in selling your biggest asset…” (Manly Daily 2015). Furthermore, in 2016 with the lead up to the property industry review mentioned previously, media reported, “Unfortunately, over the past 10 years the education standards delivery, especially in NSW, has been watered down and abused by many course providers.” (Southern Courier 2016:44).

Therefore, as with anything compromised, the industry experienced adverse commentary, including an increase of complaints from the consumer, such as issues relating to fraud occurrences, duty of care, negligence, and mismanagement of their clients’ financial requirements. As a result, the professional bodies and stakeholders lobbied the government for an overhaul of the educational qualifications applicable to property agency licencing. Unfortunately, in the interim, trust accounting fraud continued to rise.

The next section of the paper discusses the research methodology adopted, including the relevant limitations, followed by the analysis and discussion.

**RESEARCH METHODOLOGY**

The research scope was focused on the misappropriation of trust funds in New South Wales property agencies. The methodology included the exploration of the relevant issues emerging due to the gap in the literature for this research topic (Lincoln and Guba, 1985). As the research method provided various insights into the research problem this method was considered exploratory and inductive (Williams 2007). Therefore, the research was undertaken using a mixed method approach, with the qualitative research method dominant. This commenced with the incorporation of archival research and document analysis. The final stage of the research was limited to the application of basic trend data analysis. The quantitative data analysis sought to present reality through numeric statistical value.

The archival research for the pilot study consisted of sources considered secondary data. This included court cases, Fair Trading Annual Reports tabled at NSW Parliament; minutes arising from the sitting of the NSW Parliamentary Assembly where there is mention of fraudulent activity for property agents; transcripts from the Court of Appeals on trust accounting fraud convictions; Fair Trading enforcement notices published quarterly; media releases by Fair Trading and newspapers; the data from the annual reports was sought as a check method against the courts reports and media releases; and where relevant to provide further insight regarding the trust account misappropriation, and other necessary data.

The time frame of the documented cases and notices ranged over 20-years commencing approximately in mid-1997 and ending in mid-2017. A pilot study was initiated to collect qualitative data and develop the coding system for the larger 20 year data set analysis, including the subset of pre and post 2003 data. A limitation of the data was the collection of the available information during 2018 to 2019 – i.e. this time frame is prior to the introduction of the legislative changes in early 2020. However with the interruption of Covid19, the later data reporting was not available for this research project. It is anticipated that an update of this additional data will be included in future forthcoming research.

The coding system for the archival research was refined where appropriate which led to the development of themes, patterns and trends. A key characteristic of exploratory methods was the identification of the patterns and trends, which then became the foundational building blocks for emerging themes. Therefore, coded data is considered the “building blocks for data analysis” (Hennink et al. 2011:227). During the analysis of the textual context, the codes were refined and sub divided (Boyatzis 1998).

In summary, coding has been described as “... an exploratory problem-solving technique without specific formulas or algorithms to follow. Coding is only the initial step toward an even more rigorous and evocative analysis and interpretation for a report. Coding is not just labelling, it is *linking*”. (Saldana 2013:8) and ...“a method that enables you to organize and group similarly coded data into categories or “families” because they share some characteristic – the beginning of a pattern…” (Saldana 2013:9). Therefore, it was possible to add codes throughout the project, or maybe to divide issues into two or three codes or even to merge codes where appropriate. The code development continued until there was no further need to add codes i.e. “the point of saturation” (Glaser and Strauss 1967, Hennink et al. 2011:217).

Following the archival research, licensing data from NSW Fair Trading was mapped against the number of licences/certificates held or issued during each relevant year and accounting for the pre and post 2003 data subset. An analysis of the educational changes was undertaken and in particular to identify the pre and post 2003 changes. Triangulating the data aimed to provide reinforcement towards the creditability of the outcomes identified in the archival research process (Patton, 1990; Eisner, 1991; Bowen, 2009).

The next section discusses the analysis of the 20 year data set together with the 15 year sub-data set and the association with the educational changes undertaken for occupational licensing in the property sector.

# RESULTS AND ANALYSIS

The 20-year data set analysis commenced from the 1st July 1997 and ending on the 30th June 2017. The sub-data set related to the pre and post year 2003 which is when the legislation radically changed with the educational requirements for property agents licensing. Only data associated with the misappropriation of trust funds was considered. The code book developed during the pilot study phase formed the basis to commence coding the entire documents in the data set.

## Data-set results 1st July 1997 to 30th June 2017.

An analysis of the archival results from the 1st July 1997 to 30th June 2017 identified 140 *instances* of fraud reported representing 171 individuals. The term *instances* refers to the fraud incident occurring and is counted as one occurrence to include the corporation licence and any associated parties such as individual licences/certificates. This information is presented below in Table 1. The results include any relevant limitations noted in the research methodology for gathering the data.

Of the 140 *instances*, 81.43% instances involved only one person undertaking the fraud, 15.00% instances were two people involved and 3.57% instances involved three people. There were no instances recorded where there were more than 3 people involved. Therefore, the total *instances* of 140 occurrences represented 171 individuals, which is summarised below in Table 1.

Table 1: Analysis of Fraud Instances

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **INSTANCES** |  | **Instances** | **% of Instances** | **Total Individuals Involved** |
| Instances of 1 person involved |  | 114 | 81.43% | 114 |
| Instances of 2 people involved |  | 21 | 15.00% | 42 |
| Instances of 3 people involved |  | 5 | 3.57% | 15 |
|  |  | **140** |  | **171** |

Source: Author

Licensing status for these 171 individuals, showed that 84.80% were licenced, and 13.45% only held a certificate of registration, with 1.75% being unlicensed and/or unregistered as a certificate holder. Within the licence category there were 57.93% who obtained their licence prior to 2003, and 42.07% obtained their licence from 2003 and onwards. The 2003 year is used as the cut-off point because of the changes to licensing and educational requirements occurring during 2003. This licensing analysis is presented below in Table 2.

Table 2: Licensing Analysis

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  |  |  | **Cert before 2003** | **Lic before 2003** | **Cert from 2003** | **Lic from 2003** |
| Licenced individuals | 145 | 84.80% |  | 57.93% |  | 42.07% |
| Certificate of Registration | 23 | 13.45% | 47.83% |  | 52.17% |  |
| No Licence or Certificate | 3 | 1.75% |  |  |  |  |
| **Total Individuals** | **171** | 100.00% |  |  |  |  |

Source: Author

Within the 171 individuals involved in the 140 *instances*, there were eleven (11) *instances* which related to employees and this represented eleven (11) individuals. In other words the employees carried out the fraud and owners, directors or licensees of the business were not involved. These eleven (11) individuals comprised of one person who was licenced before 2003. There were nine (9) individuals who held a certificate of registration and five (5) of these holders were certified prior to 2003 and four (4) were certified from 2003. There was one individual who did not hold a licence or a certificate of registration. This information is summarised below in Table 3.

Table : Employees Analysis

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **EMPLOYEES** | **Total Indiv & Instances** | **Cert before 2003** | **Lic before 2003** | **Cert from 2003** | **Lic from 2003** |
| Licenced | 1 |  | 1 |  |  |
| Certificate of Registration | 9 | 5 |  | 4 |  |
| No Licence or Certificate | 1 |  |  |  |  |
|  | **11** | **5** | **1** | **4** | **0** |

Source: Author

Due to the time lag between the dates of the fraud occurring and the actual prosecution and cancelling of the licence, it was not possible to plot with accuracy the total instances occurring within each reportable financial year. Additionally changes to the prosecution process throughout the 20 year analysis varied. For instance, during the early stages of the suspected fraud investigation and leading up to the cancellation of the licence or certificate of registration the process varied; and in later years legislation was amended to provide for a temporary cancellation of the licence/certificate until the investigation and prosecution was finalised. In some instances a receiver was also appointed by Fair Trading to oversee the running of the agency and sell off the assets, such as the goodwill of the property management rent roll, in an attempt to recover as much of the misappropriated money as possible.

Therefore the data is presented as pre 2003 and from 2003 holistically. Below in Table 4, is the analysis for the 140 i*nstances*, where 33 *instances* occurred before 2003, and 108 *instances* occurred between 2003 and 2017. Within the latter category 45.54% individuals were licenced prior to 2003 and 54.46% individuals were licenced from 2003. This data indicates a strong link with the discussion in the literature review relating to the concerns on the diminishing aspect of educational qualifications coupled with the removal of industry experience.

Table : Pre and Post 2003 Licence Analysis

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
|  | Instances | Total Individuals | Cert before 2003 | Lic before 2003 | Cert from 2003 | Lic from 2003 | No Lic/Cert |
| 1997 to 2002 | 32 | 37 | 3 | 33 | 0 | 0 | 1 |
| 2003 to 2017 | 108 | 134 | 8 | 51 | 12 | 61 | 2 |
|  |  |  |  |  |  |  |  |
|  | **140** | **171** |  | **45.54%** |  | **54.46%** |  |

Source: Author

As a summary, Table 4 analysis shows that a high percentage of individuals who obtained their licence from 2003 were involved in fraud, in comparison to those individuals who were licenced before 2003. Additionally, this data was triangulated to the licensing activity relating to the new annual licences and total licences current per year.

## Licensing Activity

The licensing activities in NSW were analysed from the available data commencing from 1997 to 2015 inclusive, which was the last year this type of data was publicly provided in the annual reports issued by Fair Trading NSW. The analysis compared the percentage increase from each previous year, and similarly for the total licences held i.e. including continuing current licences plus new licences.

The two financial years ending 30th June 2003 to 30th June 2004, indicated a high increase of new licenses, 25.81% and 32.03% respectively. However, total licence growth for each of those years did not increase with the same proportion. At 3.25% and 4.49% respectively, the increases for continuing licenses was well below the new licence rate of growth increase. The year 2003 was when educational requirements eased, and industry experience was abolished. These changes could also be attributed as reasons for the overwhelming response of new licence applications from 2003. Therefore, once the industry experience was removed, and educational requirements softened there were very few barriers to quality control the growth in this sector.

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### The Decline with Educational Qualifications

The historical approach from the 1960s with initially mandating no formal education, and then a gradual rise to minimum compulsory subjects covered in a six month part time course, and slowly increasing to an 18 month part time course was within the expectations of the growth occurring with real estate transactions during the 1960s to the mid 1980s. At the turn of this century, elevating the minimum educational requirements to a Diploma level course offered over three years of part time study was welcomed by industry and relevant stakeholders.

Therefore to eventually abandon the rigour from previous decades and diminish the licensing course to a three week Certificate IV course, was difficult to comprehend. Consequently as a result of these changes the increases in trust fund misappropriation and consumer complaints, became the focal point for NSW Fair Trading.

### Educational Qualifications – Chronological Development

The analysis below in Table 5 provides the summary of the changing educational platform relating to occupational licensing for property agents since the 1960s.

**Table 5**: **Chronological Development of Qualifications 1960s to 2020**

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Legislation** | **Qualification** | **Course No.** | **National Code** | **Training Package** | **Nominal hours of attendance** | **This courses replaces** | **This course has been replaced by** |
| **1960s**  Auctioneers, Stock and Station Real Estate Agents Act 1941 | Nominated subjects for accounting and agency practice |  |  |  | 6 months part time |  |  |
| **1970s**  Auctioneers, Stock and Station Real Estate Agents Act 1941 | Nominated subjects for accounting, agency practice and law |  |  |  | 18 months part time |  |  |
| **1990s**  Auctioneers, Stock and Station Real Estate Agents Act 1941 | Subjects including accounting, law, ethics, agency practice |  |  |  | 3 years part time |  |  |
| **2000 to 2005** | Diploma |  |  | PRD01 | 2 to 3 years part time |  | CPP07 |
| **2005 to 2009** | Certificate IV In Property Services (Real Estate) | 9672 and 9674 | 90779NSW | PRD01 | 2 years part time |  | CPP07 |
| **2005 to 2009** | Certificate IV in Property Services (Operations) | 17685 | CPP40607 | CPP07 Property Services | 570 hours | 19196 Property (Operations) | 18366 |
| 1**9/6/2009 to 23/2/2012** | Certificate IV in Property Services (Operations) | 18366 | CPP40609 | CPP07 Property Services | 590 hours | 17685 Property Services Operations | 11168 Property Services Operations |
| **24/2/2012 to 5/7/2012** | Certificate IV |  | CPP40609 OR  CPP40611 | Transitional |  | Transitional | Transitional |
| **6/7/2012 to 2019** | Certificate IV in Property Services (Real Estate) | 17672 | CPP40307 | CPP07 Property Services | 730 hours | 9672 Property Real Estate |  |

**Source**: Author - Training packages from the Construction and Property Services Industry Skills Council and TAFE NSW. Summary from various Hansard papers (NSW Parliament).

It is interesting to note in the above table, in 2000 the minimum educational qualification was a diploma, and yet since 2005, this was diminished to a Certificate IV qualification.

Under the Australian Quality Framework (AQF) hierarchy framework, a Certificate IV is lower than an Associate Diploma, or a Diploma qualification. When government prescribed the minimum modules from the National Training Package (NTP), the VET training providers were not mandated the qualification level. Therefore, it became the norm to offer only a Certificate IV, which was the fastest and easiest approach to complete the modules required for property agency licencing.

With the recent introduction of the PSA Act 2002, in 2020, a Diploma qualification is stipulated as the minimum entry level and prescribed learning modules for the licensee-in-charge class of property agency licenses. This uplifting of the licensing qualifications stems from the 2015 consultation and review process, coupled with the subsequent proceedings, mentioned in this chapter and the conclusions chapter, which was undertaken by NSW Fair Trading.

Therefore, the approach to downgrade the level of qualification from a Diploma level to a Certificate IV level was at odds with the governments historical policy geared towards consumer protection. Additionally, the public generally perceive that “higher educational qualifications” are linked to professionalism and well-informed knowledge.

Therefore, educational requirements and industry experience underwent radical changes. Previously, the successful completion of an approved prescribed course and a minimum of two years of industry experience were essential criteria for obtaining a licence.

# CONCLUSIONS

Trust accounting and occupational licensing is an important regulatory mechanism to aid consumer protection for property transactions. The legislative obligations placed on real estate agents can be enormous and time consuming. However, it is ultimately the licensee of the property agency who is considered accountable for all trust money held on behalf of the property owner, tenants, purchasers and other stakeholders with a vested interest.

The data from the 15 year subset showed 45.54% individuals were licenced prior to 2003 and 54.46% individuals were licenced from 2003. Therefore downgrading the qualifications achieved an adverse impact for consumers. Moving forward and beyond 2020, the government has adopted policies to achieve their objective for enhanced consumer protection, and educational pre-requisites are considered an important mechanism in this process, for all licence categories.

A major milestone was reached with new legislation implemented on the 23rd March 2020. The new reforms include improvements to property agency licencing and certificates of registration, upgrading educational qualifications and the incorporation of industry experience. These reforms provide a five year pathway aimed to raise the industry standards and thereby enhancing and supporting consumer protection.

**FURTHER RESEARCH**

Whilst the research in this paper covered a 20 year data set, the research analysis is continuing to map trends with trust funds misappropriated and in particular whether pre and post 2020 identifies similar noticeable trends such as the trends established for pre and post 2023.

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