



THE LAW SOCIETY  
OF NEW SOUTH WALES

Our ref: Property:GUgl1224702

5 December 2016

Mr Andrew Gavrielatos  
Executive Director Real Estate and Property  
NSW Fair Trading  
PO Box 972  
PARRAMATTA NSW 2124

By email: [policy@finance.nsw.gov.au](mailto:policy@finance.nsw.gov.au)

Dear Mr Gavrielatos,

### **Real Estate and Property Services Industry Reform Paper**

The Law Society of NSW appreciates the opportunity to respond to the "Real Estate and Property Services Industry Reform Paper" ("Reform Paper"). We set out our comments below.

#### **1. Reforms to licensing and qualification requirements**

The Law Society supports the reform proposals which will raise the entry requirements and the practical training component for certificate holders and licence holders. The quality of the courses provided and the integrity of the providers is also key in improving competency and compliance.

We understand that the courses offered by some registered training organisations are regarded as inadequate. While the regulation of registered training organisations is a matter for the Australian Skills Quality Authority, we understand that this is a contributing factor to the quality of training for entry into the real estate industry.

#### **2. Abolition of corporation licences (Reform 1.13)**

The entity with which most solicitors and conveyancers commonly deal as the agent for a transaction is the corporate entity. For example, it is the corporate entity that is a deposit-holder and a rent receiver. To have an unlicensed corporate entity fulfil those roles is of concern to the Law Society, particularly from the perspective of consumer protection.

#### **3. Continuing Professional Development ("CPD")**

The Law Society supports mandatory CPD for licence and certificate holders. The quality and relevance of the courses provided, and competency of the provider, is critical to the effectiveness of CPD. We note that there needs to be a balance struck to ensure the implementation of appropriate controls on who can provide the CPD without making the process unduly bureaucratic.

We note the split between compulsory and elective topics. We understand that some stakeholders have proposed that half of the compulsory units should be focused on compliance. We support this proposal as it will assist in better consumer protection.

#### **4. Codification of the scope of fiduciary duty (Reform 3.5)**

While there may be benefit in a non-exhaustive definition of the scope of the fiduciary duty in legislation (ie what the fiduciary duties include), the disadvantage of such codification is that it may preclude the evolution of the fiduciary duty to deal with new circumstances.

#### **5. Material facts (Reforms 3.7 and 3.8)**

We anticipate that the proposal to confirm that certain matters constitute material facts will be of assistance to licensees. We presume this will be drafted in such a way as to make clear that the list of specified matters is not exhaustive.

The implementation of Reform 3.8 may be problematic in practice. For example, how does a buyer indicate which other material facts are important to the decision to purchase? The phrase “or can reasonably become aware” may also create practical difficulties as to the extent to which the agent should inform himself or herself about the matters relevant to the purchaser’s decision whether to purchase a property.

#### **6. Professional indemnity insurance (Reform 3.9)**

The proposal to alter the approach in relation to professional indemnity insurance for licensed conveyancers is a significant change. We note that further consultation with the conveyancing industry is proposed. The Law Society would be pleased to be involved in such consultation, so that we may provide a useful comparison of how our professional indemnity insurance works, as well as ensuring there is a degree of alignment between the requirements for solicitors and conveyancers in this area.

#### **7. Complaints management system (Reform 3.10)**

We support the proposed requirement for licensees in charge to establish a formal, written complaints management system. We do however have concerns with mandating the use of the Australian Standard as a guide, which is only available from a commercial provider at not insignificant expense.

#### **8. Developers engaging in property sales (Reform 3.10)**

There is a conceptual difficulty with legislation which has the object of regulating agents extending to a transaction in which no agent is involved. It also seems inconsistent with the amendments made to the *Property, Stock and Business Agents Regulation 2014* in August 2016 to remove licensing requirements from certain commercial property agents (discussed at Appendix B page 39). We note there is to be further consultation regarding this proposal and we would be pleased to be included in that consultation.

#### **9. Digitisation**

We agree that the property industry is increasingly utilising greater digitisation of processes, including greater use of electronic signatures, electronic documents and the transition to electronic conveyancing. Digitisation impacts upon all stakeholders in the property industry and we would be pleased to be involved in further initiatives and discussions in this area.



## **10. Consultation on the draft bill**

Given the scope of what is proposed, we suggest that all stakeholders should be given the opportunity to review the draft bill before it is introduced into Parliament.

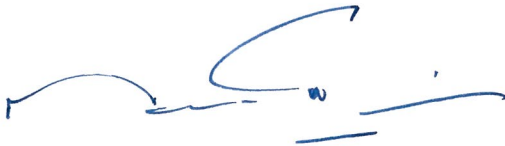
## **11. Implementation time frame**

The commencement date for the amendments, and release of any supporting regulation, should allow sufficient time for agents and other stakeholders to prepare for the changes. Further education and updating of necessary forms will be required.

We would also be pleased to participate in future discussions that will likely be held by NSW Fair Trading's Real Estate Reference Group, in developing and implementing the proposed reforms. This is particularly important given the significant interaction between lawyers and real estate agents in the property industry.

Should you have queries about this letter, please contact Gabrielle Lea, Policy Lawyer on (02) 9926 0375 or by email to [gabrielle.lea@lawsociety.com.au](mailto:gabrielle.lea@lawsociety.com.au).

Yours faithfully,



**Michael Tidball**  
**Chief Executive Officer**