



Mr Samuel Porter  
Deputy Secretary, Regulation, Legal and Integrity  
Department of Justice and Community Safety  
Level 17, 121 Exhibition Street  
MELBOURNE VIC 3001

Dear Mr Porter

## **REGULATORY IMPACT STATEMENT FOR THE PROPOSED ESTATE AGENTS (EDUCATION) REGULATIONS 2020**

I would like to thank your staff at the Department of Justice and Community Safety (DJCS) for working with the team at Better Regulation Victoria on the preparation of the Regulatory Impact Statement (RIS) for the proposed Estate Agents (Education) Regulations 2020 (the Regulations).

The regulations are proposed to be remade under the *Estate Agents Act 1980* (the Act) which sets out the licensing scheme for estate agents and the eligibility requirements for employment as an agent's representative.

The Estate Agents (Education) Interim Regulations 2019 are currently in force and expire on 22 October 2020. The regulations have been extended twice to ensure they did not sunset before the completion of the Commonwealth Government Review into the CPP07 Property Services Training Package, which is a set of nationally recognised real estate qualifications.

As you know, under section 10 of the *Subordinate Legislation Act 1994* (the SLA), the Commissioner for Better Regulation is required to provide independent advice on the adequacy of the analysis provided in all RISs in Victoria. A RIS is deemed to be adequate when it contains analysis that is logical, draws on relevant evidence, is transparent about any assumptions made, and is proportionate to the proposal's expected effects. The RIS also needs to be clearly written so that it can be a suitable basis for public consultation.

I am pleased to advise that the final version of the RIS received by us on 16 July 2020 meets the adequacy requirements of the SLA.

### **Background**

DJCS notes that the real estate industry is regulated for three broad reasons:

- consumers engage in property and business sales and transactions relatively infrequently, and as such tend to have a relatively limited knowledge of the real estate market;
- these transactions usually involve a large portion of most individuals' total wealth, and are likely to be the most expensive transactions people make in their lives; and
- large amounts of money are held in trust by real estate agents.

The RIS notes that the real estate market is characterised by information asymmetry, where property owners do not always have the right or sufficient information to negotiate effectively with agents or to hold them to account. This market failure warrants intervention to ensure that consumers' interests are

protected. DJCS notes that this information asymmetry is reflected in enquiries to Consumer Affairs Victoria (CAV), from complainants seeking advice and information around issues they are experiencing in residential property management and residential property sales. The RIS notes that it is not uncommon for complaints to be referred on to the Victorian Civil and Administrative Tribunal (VCAT).

The RIS argues that third parties can also be adversely affected by estate agents, in that property owners hire agents to meet their needs – but renters or buyers who are negatively affected by these agents can neither choose nor remove the agent. DJCS explains that this market power can leave consumers at the mercy of substandard agents. In particular, the RIS explains that vulnerable tenants can experience substantial harms from substandard agents, such as the risk of homelessness, unsafe housing conditions lacking essential services or facing potentially large and unnecessary costs (for example through estate agents not understanding/applying the law in the case of lease break fees).

DJCS also states that stakeholders have proposed that current qualification requirements are inadequate and are eroding confidence in the real estate industry and its reputation. The RIS states that a decline in the industry’s reputation from unregulated qualification requirements would likely result in increased search costs for consumers, as they would need to spend more time determining if their agents are competent or trustworthy.

Given these issues, DJCS argues that there is an ongoing need for appropriately qualified agents and agents’ representatives, in order to manage these risks to consumers. A real estate agent acts on behalf of owners and landlords to arrange the sale or lease of property, act on behalf of buyers, provide market appraisals, negotiate sales or leases and collect rents. An agent’s representative is employed by or acts for a licensed real estate agent and can perform any legal functions of that estate agent with written authority.

To address these policy problems, the RIS explains that the objectives of the proposed regulations are to:

- Ensure training undertaken by estate agents and agents’ representatives equips them with the necessary skills to perform their duties competently and render services with expected levels of due care and skill; and
- Ensure the prescribed education requirements for estate agents and agents’ representatives do not impose undue costs on RTOs, estate agency businesses, students or consumers.

### Analysis

Following the completion of the Commonwealth Government Review into real estate qualifications, a new CPP Property Services Training Package was released in March 2019. Options considered in this RIS draw from qualifications in this Training Package and are broken down by courses of instruction for real estate agents, and agents’ representatives:

<b>Real estate agents</b>	<b>Option 1</b>	Prescribe 22 Certificate IV units
	<b>Option 2</b>	Prescribe 29 Certificate IV units
	<b>Option 3</b>	Prescribe 22 Certificate IV units and 12 Diploma units
	<b>Option 4</b>	Prescribe 29 Certificate IV units and 12 Diploma units
<b>Agent’s representatives</b>	<b>Option 1</b>	Prescribe 12 Certificate IV units
	<b>Option 2</b>	Prescribe 16 Certificate IV units
	<b>Option 3</b>	Prescribe 18 Certificate IV units

These options are assessed against a base case of the real estate industry self-regulating by providing a level of voluntary training. The RIS notes that there are incentives for real estate agencies to self-regulate in a base case scenario, such as it being a way of competing with other agencies through

credentialization. In addition, DJCS argues that a level of self-regulation would continue as education levels would be relatively entrenched after 20 years of being prescribed.

The RIS estimates the economic costs (including opportunity costs as well as course costs) for each of the options, on students, employers, consumers and Registered Training Organisations (RTOs). These costs are based on a variety of sources and provide upper and lower bounds to account for uncertainties in estimation.

The RIS then uses a Multi Criteria Analysis (MCA) to incorporate qualitative concerns. This MCA considers each option’s expected impacts against the following criteria:

- How the option will affect the real estate services industry’s reputation (12.5 per cent);
- Whether the instruction will aid in reducing the risk to vulnerable tenants from substandard estate agents and agents’ representatives (25 per cent);
- Whether the instruction will likely lead to a reduction in disputes between consumers and agents (12.5 per cent); and
- The cost impact on students. The RIS details estimated cost impacts on employers, Registered Training Organisations (RTOs) and consumers. 50 per cent). Scores against these criteria are based on the qualitative analysis described above.

DJCS acknowledges that some economic data used in the RIS (including revenue, employment, wage and inflation projections) may have been impacted by the current COVID-19 pandemic, but suggests impacts on the quantitative analysis will be marginal and so the outcome of the MCA is unlikely to be affected.

**Proposal**

Based on the analysis above, DJCS proposes the following preferred options:

<p><b>Option 3 for real estate agents</b></p>	<p>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.</p> <p>Students who complete this course of instruction will be awarded a Certificate IV and Diploma.</p>
<p><b>Option 3 for agents’ representatives</b></p>	<p>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. Students who complete this course of instruction will be awarded a Certificate IV.</p>

DJCS states that the final MCA scores for all options considered were very close to each other. Option three for both real estate agents and agents’ representatives was, in the Department’s view, the best mix of the criteria on managing risks to vulnerable tenants, disputes between consumers and practitioners, the reputation of the industry and cost impacts on students.

The RIS estimates that the proposed regulations have a total economic cost – to students, employers, RTOs and consumers – of between \$465 million and \$634million in Net Present Value (NPV) over ten years.

The RIS provides breakdowns of costs on for all groups, including for full-fee and subsidised-fee students.

DJCS has undertaken preliminary consultation in developing these options, both through the 2016 Consumer Property Law Review and through discussions with the Department of Education and Training, RTOs, industry trainers, other state and territory governments and the Real Estate Institute of Victoria.

### **Implementation and Evaluation**

The proposed regulations are intended to commence on or before 22 October 2020. An extended transition period for current training packages is proposed to end on 30 September 2021. Prior to this commencement period, DJCS will communicate the new requirements to RTOs, employers and prospective students through social media, information campaigns and updated guidance available at the CAV website and call centre.

The RIS states that compliance will be ensured through existing CAV monitoring and enforcement activity.

DJCS will evaluate the effectiveness of the proposed regulations using existing sector complaints monitoring and stakeholder consultation and feedback channels. Key areas of focus will be the frequency and nature of complaints, assessing any change in behaviour among key stakeholder groups. Changes will be assessed against the objectives outlined in the RIS. DJCS has also committed to undertake a thorough post-implementation evaluation within three to five years of the regulations' commencement.

Should you wish to discuss any issues raised in this letter, please do not hesitate to contact my office on 03 7005 9772.

Yours sincerely



**Anna Cronin**  
Commissioner for Better Regulation