

Tuesday, 4 March 2003

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Dear Pat,

Working Party – Property Agents and Motor Dealers Act 2000 Review

At yesterday's meeting of the Working Party, attended by PSAQ Vice Presidents Andrew Ross and Tom French, the PSAQ briefly outlined its thoughts on the link between sound employment practices and consumer protection.

This subject is so important that it seems appropriate to document our views.

THE ISSUES

We would like to clearly enunciate a number of issues which we believe impact directly on consumer protection:

1. Within the real estate industry, the PSAQ believes there is an incontrovertible link between the financial security (or otherwise) of sales people, and consumer protection.
2. Until 1997, employment practices in Queensland's real estate industry were totally unregulated.
3. Within some sectors of the industry, there remains a culture where employees (especially sales people) are seen as "expendable".
4. Many Licensees create instability by changing employment conditions (especially commissions) at will, leading to high staff turnover.
5. Many Licensees fail to meet minimum Award conditions and/or refuse to pay promised commissions to their sales people.
6. The current level of Award compliance¹ is at an all-time high of 55.0% – in other words, 55.0% of Licensees are making some attempt to comply with industry Awards.
7. Two things limit Award compliance:
 - a) funding for Award-enforcement; and
 - b) the lack of complementary legislation.
8. If sales people are financially desperate, they do desperate things – and the consumer suffers.
9. These issues will become more apparent as the real estate market comes "off the boil", especially if the regulated commission structure remains in its present form.

¹ Award compliance has increased from 32% since February 2001, due to perseverance on the part of the PSAQ, and the fact that new entrants to the industry now learn about minimum employment conditions through pre-vocational training.



WHY NOW?

Why has the PSAQ waited until now to introduce this subject to the PAMDA review?

In 1998, the PSAQ formally identified the employment practices-consumer protection link to OFT, in a formal funding application which was directed at improving consumer protection through education about sound employment practices.

The PSAQ application was strongly supported, in writing, by many industry representatives.

Even though the PSAQ had been encouraged by the OFT to make the funding application, the application was ultimately rejected out-of-hand by others in the OFT with a simplistic response – (paraphrased) “our job is consumer issues, not industrial relations”.

The OFT rejected both the PSAQ’s argument and its funding application out-of-hand, and so the PSAQ effectively “shelved” the idea. However, our views on the subject never changed . . .

At yesterday’s meeting, the PSAQ tabled a recent (December 2002) Report by John Rau, MP, into practices in South Australia’s real estate industry. The Report’s recommendation 13.8.1 proposes to regulate the industrial relations environment through complementary consumer legislation.

Since becoming aware of Mr Rau’s Report some two weeks ago, the PSAQ has taken the time to both correspond and speak with Mr Rau, a qualified barrister, in order to make sure that the PSAQ accurately reflects Mr Rau’s views.

Now that a link between employment practices and consumer protection has been independently identified by another Government, it seems timely to again bring this matter to the attention of the OFT.

WHAT IS THE CORE ISSUE?

Mr Rau asserts that there is a strong link between effective consumer protection and sound employment practices. He stated the following to the PSAQ:

1. “A few strategic interventions will change the marketplace”; and
2. “It is important that we anchor Award requirements in other legislation”.

Consequently, Mr Rau’s Report recommends that (in South Australia’s consumer legislation):

“A letter of appointment² in a form compatible with the “Real Estate Award” should be required in relation to each employee engaged in the industry”.

² In the Queensland vernacular, read “Employment Agreement”.

In short, Mr Rau's Report complements views held long-term by the PSAQ, and his recommendations make elegant (and cost-effective) sense – not only for South Australia, but for the real estate industry anywhere.

WHAT DOES THE PSAQ PROPOSE TO THE OFT?

The PSAQ proposes that PAMDA be amended to require registered sales people and employed licensees, and their employer, to make a declaration about the existence of an employment agreement (as required by Queensland's Property Management/Property Sales Awards), each time there is a new application for, or renewal of, a Certificate of Registration or Real Estate Agent's Licence (as an Employed Licensee).

Award-enforcement is very expensive, whereas complementary legislation, as described above, would cost the OFT (almost) nothing, **and may in fact result in a net saving to Government as a whole.**

The likely results:

1. Award compliance would be markedly-improved within twelve months (for one-year renewals), and almost 100% within three years (for three-year renewals).
2. Sales people being effectively remunerated would have less reason to engage in undesirable conduct.
3. There would be ongoing, positive consumer outcomes.
4. The administrative cost (i.e. for the OFT to incorporate the new requirements in its existing forms) would be almost negligible.
5. Overall PAMDA compliance costs would be substantially reduced.
6. There would be substantially-reduced compliance costs other areas of Government:
 - a) Much less need for Award enforcement.
 - b) A reduced impact on the Social Security system.

IN SUMMARY

The PSAQ's commitment to reform of consumer issues is driven by the belief that both the PSAQ and the OFT are trying to regulate the same demographic group. After all, a Licensee who tries to rip off the consumer will most likely treat his or her employees in the same manner, and vice-versa.

Therefore it is our hope that this proposal will receive serious consideration by the OFT. We would be happy to meet with OFT representatives at any stage to further progress this matter.

Yours faithfully,



BARRY GANNON.
PSAQ State Secretary