



22 September 2010

Fair Trading Policy  
Department of Employment, Economic Development and Innovation  
GPO Box 3111  
BRISBANE QLD 4001

Dear Sir or Madam,

### Splitting of the Property Agents and Motor Dealers Act 2000 (PAMDA)

The PSAQ is the only association registered to exclusively represent the interests of real estate salespeople (which includes, in Queensland, property management personnel) in workplace relations matters. Since the late 1990s, the PSAQ has also been involved in matters to do with the registration and licensing of real estate salespeople; in particular having extensive input into:

- the development of PAMDA;
- the development of the PAMDA Codes of Conduct;
- the lobbying of OFT to adopt mandatory pre-vocational education standards for registered salespeople; and
- submissions and negotiations regarding commission arrangements.

### Independent Contracting

Whilst the issue of "independent contracting" is not currently contemplated in the proposed PAMDA split, it is increasingly alive and well at the "coal face" of the real estate industry. Such an increase in such activity has been brought about by two complementary issues – the *Fair Work Act 2009*, and the Real Estate Industry Award 2010.

For brevity, suffice to say that for **employees**, the loopholes in workplace relations legislation that previously allowed unproven "salespeople" to be engaged on "commission-only" have now been closed – and so business owners are now seeking alternative methods of achieving the same end, and are looking to "independent contracting" as the answer. This has resulted in previously-unidentified weaknesses in consumer protection legislation in three states now providing comfort to such business owners. It is notable that in both South Australia and Western Australia, consumer legislation effectively addresses this issue to the benefit of both consumer protection and workplace relations outcomes. For example, the South Australian legislation is quite elegant:

#### ***Land Agents Act (SA)***

##### *6A—Sales representatives to be registered*

*(1) A person must not act as a sales representative for an agent unless the person—*

*(a) is registered as an agent under this Act; or*

*(b) is registered as a sales representative under this Act and **is acting as an employee engaged by the agent under a contract of service.** (emphasis ours)*

By contrast, in adopting a broader definition of employee than the normal common law usage (contract **OF** service) the Queensland legislation effectively opens the door to all comers:

***Property Agents Bill 2010 (QLD)***

*employ includes engage on a contract **FOR** services or commission and use the services of, whether or not for reward. (emphasis ours)*

The issue of “independent contracting” in the real estate industry is of major concern to the PSAQ. The concern in particular arises from people who are inexperienced in real estate sales being engaged in a manner that could result in them earning no income over an extended period. This is by contrast with independent contracting in almost every other industry, whereby an independent contractor can realistically expect to receive “a day’s pay for a day’s work”. It has been observed that the engagement of salespeople as “independent contractors” in this industry is primarily intended to circumvent minimum employment standards – especially with respect to the payment of wages and the conditions under which commission-based and commission-only remuneration may apply.

The PSAQ has previously recognised, and made submissions on, the nexus between consumer protection and workplace relations in the real estate industry – i.e. a salesperson who is of unproven competence is more likely to both act in a manner that is detrimental to consumers **and** not earn a “living” income. This nexus was recognised by John Rau MP, current Attorney-General & Minister for Justice in South Australia, and former workplace relations lawyer, in his 2002 “Report into Practices in the Real Estate Industry” (South Australia).

The PSAQ and REA NSW (the PSAQ’s New South Wales counterpart), as the key operational unions servicing the real estate industry, recognise the need to address this issue at both a state and national level.

We maintain that there is a clear distinction between “employees” – i.e. registered sales people/property managers – and Licensed Real Estate Agents working as salespeople who may elect to be “conjuncting agents” (rather than “independent contractors”).

*The PSAQ submits, therefore, that the following definition should be used:*

***“employ means engage on a contract of service.”***

*Further, we submit that the only people who should be permitted to be engaged as “contractors” (or “conjuncting agents”) are those who:*

- *hold a Real Estate Agent’s Licence; **and***
- *are operating a Trust Account; **and***
- *have **proven** competence (as opposed to **assessed** competence) in real estate sales.*

## Licensing of Real Estate Agents

The PSAQ remains additionally concerned that a full Real Estate Agent's Licence may still be issued to a person who completes the regulated academic requirements, **but has not gained sufficient or adequate relevant experience in the essential aspects of Real Estate Agency management or practice.**

Some RTOs are now actively promoting "fast track" courses to obtain a full Licence, using competency-based training modules, however we assert that any presumption of "competency" without practical experience is, for the purposes of consumer protection in the real estate industry, erroneous.

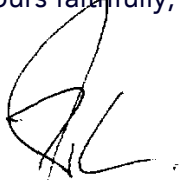
It is expected that this issue may be addressed by the NOLS reforms but we believe that Queensland should not rely upon this expectation.

Again, consumer protection is the fundament of our concern with a perceived high risk of infringement by inexperienced licensees in matters of ethics, legislation compliance and industrial relations/human resource management.

*We therefore submit that an experience-based component must be reinstated<sup>1</sup>, in addition to the required modules, for a person to qualify to be issued with a Real Estate Agent's Licence.*

This completes our submission.

Yours faithfully,



**TOM FRENCH.**

State & Federal Secretary (acting)

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<sup>1</sup> Pre-PAMDA legislation required anyone who applied for a Licence to have worked for a specified minimum period in the real estate industry.