

Oral Submission to Parliamentary Committee

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PSAQ

Property Sales
Association of Queensland

Representing Real Estate
Property Managers and
Sales People in industrial
relations & professional
matters statewide.

Thank you for the opportunity to address your committee.

My association, the Property Sales Association of Queensland, is a Federally registered Union of Employees in the Real Estate Industry. Its members are active salespeople or property managers and its Committee of Management is comprised of elected past or currently active industry employees.

We represent our members, from not an ideological viewpoint, but from a practical operational viewpoint with a deep concern for "fair play" for the industry and the consumer.

We congratulate the work done to date in the migration of the Property Agents and Motor Dealers Act to the Property Agents Bill before us now.

In our submission of the 18th July 2011 to this committee, we applauded the efforts made to address the practice of agents using "independent contractors" as salespeople and in some identified cases, property managers.

I now wish to amplify the concerns my association hold for the proliferation of this practice, through another name, particularly when it involves "novice" employees.

As stated in our submission, an element of employers in the industry has been hell bent on subverting the requirements of legislation, particularly, in our vision, in relation to the industrial legislation and award/s. Legislation and awards are drafted and enacted to blend the social, commercial, industrial and consumer requirements of a particular sector. In the case of Real Estate, an award was introduced to the Queensland industry in 1997 for the first time.

Since that date, various "legal" avenues have been utilized by an element of employers to avoid the "fair play" requirements of particularly the award, so as to avoid the commercial responsibility of employment. With that avoidance, the other components that formulate the balanced legislation/award are thrown out of balance. Importantly, the consumer is then put at higher risk.

Initially, Queensland Workplace Agreements were utilised, then Australian Workplace Agreements, then Independent Contractors and on hire labour as supplied by various commercially based companies. As each avenue was closed or confined, another was devised and promoted, again by commercial forces, thus perpetuating the imbalance.

Back to the current Property Agents Bill, we go back to the then Minister's introductory speech to Parliament as recorded in Hansard. The Hon Peter Lawlor made it very clear that the "sham employment arrangements" needed to be addressed and that the proposed Bill does just that.

The explanatory notes to the Bill on page 3 also address this matter.

We as an industry body are aware of and concerned by the upsurge of "5 day wonder" real estate agent licences being issued by the Office of Fair Trading (OFT) to salespersons/property managers who have "completed" 20+ modules of competency through any one of a number of training organizations, and therefore satisfy the requirements of the PAMDA Regulations.

We acknowledge that experienced salespeople may well be competent in those modules and RPL is valid and genuine. We have no objection to this practice!

We are however concerned with the emerging practice of an agent indicating to a prospective employee "go and get your full licence and we will put you into our pool of conjuncting agents".

This person may then approach one of three training organizations that we are aware of, rip through the modules in a very short time, apply to the OFT for a full licence, and be out, operating as a Real Estate Agent under the banner of a recognized agency, with no real understanding of the practicality of real estate practice. The huge risk here is that the person involved has little chance of making commissions sufficient to maintain themselves, are not sufficiently supervised, and place the public at risk of bungled transactions through their lack of experience. They may even band together with others of the same inexperience to represent property for sale or lease.

You may be aware of the current campaign by the Fair Work Ombudsman (FWO) in checking agencies compliance with award requirements. We are aware of circumstances where responsible agents have complained that they are being commercially disadvantaged by competitive agencies using the avoidance practices and therefore avoiding the requirement to pay a fair wage to their "employees". This is recognized as a severe penalty for those who are attempting to comply with the requirements. Pay roll tax and taxation/superannuation responsibilities are also avoided.

We have received complaints from persons acting as salespersons who have been engaged as "independent contractors" and have not been paid one dollar in wages or commissions in up to a six month period. One such instance at Bribie Island was referred to the Fair Work Ombudsman's office and we understand is currently the subject of a prosecution of the agency by that Government body. Another such instance involving a Gold Coast agency is currently before QCAT awaiting a decision.

In summary, we believe that the bill addresses the "independent contractor" issue partially and we ask that the measures addressed in the Bill for restriction on this type of engagement be strengthened. We believe that the surge of the offering by training organizations of 5 day wonder licences is a progression of the avoidance tactics and that the Bill should contain an experience requirement together with the academic requirement for the issue of a full Real Estate agent's licence- as the modern award does in categorizing a "commission only" entitlement (S 16.2 (c)). This award is a consent award drafted by employers and employees representatives nationally in 2009 and approved by the AIRC in December 2009, effective January 2010.