



# CREATIVE CONSEQUENCES P/L

LAW, BUSINESS AND REGULATION ADVISORY

18 November 2016

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

Thank you for providing Creative Consequences with the opportunity to make a submission in relation to the *Real Estate and Property Services Industry Reform Paper (Reform Paper)*.

The *Reform Paper* sets out the NSW Government's vision for the real estate industry and considers training pathways, greater transparency and accountability, opportunities for industry co-regulation, improved trust account processes, more effective disciplinary measures, independent dispute resolution and encouraging digitisation of the sector. The *Reform Paper* calls for feedback in relation to whether there may be practical implementation issues as a result of the proposed reforms; whether there may be unintended consequences as a result of the proposed reforms; what transition period would be appropriate and the length of time it will take for the industry to be ready for co-regulation.

In this submission Creative Consequences will discuss the proposed reforms to the Continuing Professional Development Framework.

### Creative Consequences

Creative Consequences is a boutique advisory and consultancy firm working domestically and internationally to provide high level regulation and policy assistance and advice to public and private organisations including regulators of professions and industry groups, educational institutions, religious orders and firms in the following four areas – Regulatory Assessment, Design and Implementation; Complaint Investigation Review and Reform; Practice Management Course Accreditation and Ethics.

Steve Mark and Tahlia Gordon are the Directors of Creative Consequences.

Steve is a lawyer by profession, and was the New South Wales Legal Services Commissioner from 1994 to August 2013. Prior to being appointed Legal Services Commissioner of New South Wales, Steve was President of the New South Wales Anti-Discrimination Board from 1988 to 1994.

Tahlia Gordon is a lawyer by profession and was the Research and Projects Manager of the Office of the Legal Services Commissioner from 2005 to 2013. Prior to joining the OLSC, Tahlia was the Executive Director of the Legal Profession Advisory Council in Sydney and the

Policy Officer at the NSW Bar Association. She has also worked at the Australian Mission to the United Nations in New York.

Steve and Tahlia have worked with regulators in England, Scotland, Ireland, Canada, the United States and Asia to improve regulatory processes to benefit the profession and the community. Steve and Tahlia have published and spoken widely about regulatory design and assessment, professionalism, ethical infrastructure and ethics. While Steve and Tahlia's main focus has been on setting effective and proactive regulatory frameworks, promoting high ethical standards and developing ethical infrastructure, the breadth of their knowledge and experience extends to virtually any group, firm or industry that wishes to improve its standards, integrity, service delivery and professionalism in the community.

### The proposed reforms to Continuing Professional Development

The *Reform Paper* proposes a new framework for Continuing Professional Development (CPD). The proposals include as follows:

- Certificate holders must complete six competency units from a Certificate IV qualification annually for the first 4 years.
- Licensees will be required to undertake 6 hours of CPD (instead of the current 12 CPD units that take 4 hours to complete).
- The 6 hours will be divided into 3 hours of compulsory topics, and 3 hours of elective topics.
- Licensees in charge will also have to undertake an additional 3 hours CPD focusing on business skills.

The proposals further recommend that;

- The compulsory topics and the additional CPD for licensees in charge will be approved by the Commissioner for Fair Trading based on the recommendation of an advisory committee.
- The compulsory topics will be revised on a regular basis to ensure that this CPD training covers key matters such as legislative changes, identified compliance issues and responses to changing market practices.
- The compulsory topics will be delivered by industry groups and Government agencies. (An industry group is an 'industry association' or any other entity approved in writing by the Minister.)
- Grounds for approval may include that an entity must be able to demonstrate it has sufficient expertise to deliver adequate training, and a close connection with the industry.
- The remaining 3 hours will be made up of elective CPD topics chosen by licensees to suit their own professional needs but the elective topics and may be delivered by Registered Training Organisations (RTOs).

The proposed reforms stand in stark contrast to the current CPD framework for the real estate industry in New South Wales. The current CPD framework which has been in force since 2003 is set out in the Director General's Guidelines for Continuing Professional Development, which is published by the Department of Fair Trading. The Guidelines stipulate that the CPD framework is aimed at "maximising consumer protection outcomes, maintaining public

confidence by ensuring that industry participants are continually updating their skills, and reducing disputes in the NSW property agency industry”.

In the current CPD framework a licensee or certificate holder must complete 12 points of CPD in the 12 months prior to the renewal date of their licence or certificate. If more than 12 points of CPD are undertaken, a maximum of 11 points can be carried forward for 12 months. Further, in the current CPD framework there are no compulsory CPD units, and licensees and certificate holders can choose from all available courses. Under the current CPD framework there are numerous training providers, and the costs of undertaking the required annual CPD vary.

The current CPD framework that exists in New South Wales has been subject to considerable criticism. According to a Report commissioned by the Department of Fair Trading entitled *A review of training for licensed occupations in the New South Wales property services industry*, (*Review Report*) which was published in 2016 the majority of stakeholder submissions supported continuing professional development (CPD) as a valuable tool for the dissemination of knowledge and the maintenance of skills but agreed to a need for significant improvements to the current CPD arrangements. Many expressed concern about the quality of delivery, the relevance of the topics, the quality of the trainers and the value of CPD generally. In response to the concerns about the CPD framework the *Review Report* recommended as follows:

- That the existing guidelines be revised to incorporate 3 classes of CPD – information, skills development and professional development;
- That compulsory CPD be used as a key vehicle for delivering information or providing key training such as work, health and safety or anti-discrimination training;
- That a CPD training panel approve all CPD, except professional development CPD;
- That stock only agents be exempted from CPD; and,
- That Fair Trading investigates a means by which evidence of completion of CPD can be provided directly to Fair Trading by the relevant RTO.

The recommendation that the existing guidelines be revised to incorporate 3 classes of CPD was based on the belief that a CPD framework should have a coherent conceptual approach. The view taken by the *Review Report* was that, consistent with other CPD frameworks, a sound CPD program has three elements – skills development, information dissemination and professional development.

This view does not appear to be promulgated in the recommendations of the *Reform Paper*. The recommendations in the *Reform paper* do not state that CPD should incorporate the three classes identified above. In fact, the recommendations in the *Reform Paper* do not address the content of compulsory or elective CPD topics at all or make any recommendations about what the subjects should cover. The *Reform Paper* does however recommend that an industry/government panel be established to determine and review compulsory CPD topics. The *Reform Paper* states that the compulsory topics will be reviewed on a regular basis to ensure that CPD training covers matters such as legislative changes, identified compliance issues and responses to changing market practices.

This approach is totally inconsistent with other profession specific CPD frameworks. In the legal profession in New South Wales, for example, the CPD framework requires lawyers to complete 10 CPD units each year. Within the 10 units lawyers at least one (1) CPD unit every year in each of the following fields:

- Ethics and Professional Responsibility;
- Practice Management and Business skills;
- Professional Skills; and
- Substantive Law.

The requirement that lawyers complete one unit every year of Ethics and Professional Responsibility; Practice management and Business Skills; and, Professional Skills has been in place since 2009. Last year, the framework was amended to require that lawyers complete one unit of Substantive Law each year.

The Law Society of New South Wales, for example, includes the following topics as meeting requirements: conflicts of interest; how to identify an ethical issue; communicating direct with third parties; a lawyer's duties to the court; risk management; file management; cost rules; communication and interpersonal skills; client interviewing; plain English drafting; and career and personal development.

The CPD framework in New South Wales for lawyers embraces the view that legal education should focus on what lawyers need to be able to do rather than just what lawyers need to know. The framework also recognises that law graduates today not only need to have substantive knowledge in a practice area but also a range of other generic skills including the skills of: communication (both oral and written); critical and analytical thinking; problem solving; teamwork; independent learning; and information literacy.

Similarly, accountants in New South Wales are required by the CPA to complete four compulsory subjects - Ethics and Governance; Strategic Management Accounting; Financial Reporting and Global Strategy and Leadership. They must also complete two electives chosen from the following - Advanced Taxation, Malaysia Taxation; Singapore Taxation; Advanced Audit and Assurance; Contemporary Business Issues; or, Financial Risk Management.

Creative Consequences submits that, in order to, ensure that a CPD framework is relevant and effective it must comprise of a framework which contains compulsory subjects which are identified and regularly offered to those undertaking CPD. In addition, Creative Consequences is of the view that the compulsory subjects be delivered by the relevant professional association, and not by industry groups and government agencies. Creative Consequences submits that having the relevant professional association deliver the compulsory core subjects is the only answer to ensuring both quality and relevance.

Yours sincerely,



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