

Mandatory continuing  
professional development for

# PROPERTY AGENTS IN QUEENSLAND



Consultation Regulatory Impact Statement  
**SEPTEMBER 2022**

## Collection Notice

The Department of Justice and Attorney-General is undertaking consultation on proposed mandatory continuing professional development for property agents, which may primarily involve amendments to the *Property Occupations Act 2014* in relation to licensing laws in Queensland and welcomes feedback from interested stakeholders. The department may choose to publish submissions on the Department of Justice and Attorney-General website ([www.justice.qld.gov.au](http://www.justice.qld.gov.au)), unless the material is provided in confidence. Material provided in confidence should be clearly marked 'in confidence'. While the department will endeavour to identify and not publish material marked as confidential, submitters should note that submissions will be subject to the *Right to Information Act 2009* (Qld) and any request for such documents will be assessed in accordance with that Act. Your personal information will be handled in accordance with the *Information Privacy Act 2009* (Qld).

## Privacy

The Department of Justice and Attorney-General is collecting your personal information as part of the consultation on proposed mandatory continuing professional development for property agents, which may result in amendments to the *Property Occupations Act 2014*. Your personal information may be disclosed to partner agencies and non-government entities such as consultants or contracted service providers to analyse, respond and report feedback during the consultation process. Your personal information may also be used for related research, reporting, policy or planning functions. The Department of Justice and Attorney-General will not disclose your personal information unless otherwise authorised or required under a law. Your personal information will be managed in accordance with the provisions of the *Information Privacy Act 2009* (Qld).

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# Executive summary

As part of the Queensland Government's 2020 election commitment (2020 GEC) plan to support jobs, help small business, and invest in Queensland industry and local communities, the Government made the following election commitment:

**Subject to the results of continued consultation with key stakeholders and the results of a regulatory impact statement, legislate to implement mandatory continuing professional development (CPD) for property agents to improve professional standards, protections, transparency and affordability for Queenslanders.**

For many consumers, buying and selling real property can be among the most significant financial transaction and commitment they make in their lifetime. In broad terms, real estate agents and auctioneers are engaged by property owners to negotiate and facilitate the sale of their property. Some property buyers also appoint a real estate agent to assist in the identification and purchase of a property that meets the buyer's needs and expectations.

In addition to acting for consumers buying or selling property, many real estate agents provide property management services and act as letting agents for property owners. Resident letting agents also provide similar letting and property management services for owners of lots in particular building complexes (for example, holiday units, and some apartment buildings in community titles schemes).

The nature of services provided by real estate agents, real property auctioneers<sup>1</sup>, resident letting agents and real estate salespersons (collectively known as 'property agents') means that they hold a position of significant trust in their relationship with their clients. Property agents are responsible for the largest purchase or investment a client is likely to undertake, the purchase of a home or investment property, including management of a rental property. Property agents deal with significant amounts of their client's money as part of these business transactions, holding these moneys in individual trust accounts on behalf of their clients.

This is why industry specific regulation of particular property services has been a long-standing feature of Queensland law.

Within Queensland's current legislative framework, the *Property Occupations Act 2014* (PO Act) provides an occupational licensing framework for property agents. To complement this framework, the *Agents Financial Administration Act 2014* (AFA Act) provides protection for consumers from financial loss in their dealings with agents operating under the PO Act.

The PO Act is administered by the Office of Fair Trading (OFT) within the Department of Justice and Attorney-General (the Department), with one of its functions being the regulation of the property industry. The OFT protects the community and promotes market place integrity by making sure only suitable people are licensed to work in certain occupations, including the real estate industry.

In order to be eligible for a licence or registration certificate under the PO Act, an individual must hold the educational or other qualifications approved by the chief executive and these are stated on the Department's website. The PO Act, however, does not require further ongoing professional development once an initial licence or certificate is obtained.

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<sup>1</sup> Please note, the terms 'real property auctioneer', 'property auctioneer' and 'auctioneer' are used interchangeably.



## Purpose of this consultation process

This Consultation Regulatory Impact Statement (RIS) analyses the costs and benefits to property agents and associated industry sectors, the Government, consumers and the general community that would arise from a mandatory CPD scheme for property agents in Queensland.

Introducing a mandatory CPD for property agents is a means of increasing the professional standards of property agents, with the aim of reducing harm to consumers as well as to the real estate sector. Increased professional standards can positively impact the conduct of individual agents or agencies in terms of compliance with PO Act requirements (as opposed to negative impacts on compliance with PO Act requirements due to inadvertent lack of knowledge) and delivery of better services to consumers.

This is particularly important when agents are dealing with large amounts of their client's money in trust accounts. Raising professional standards can have benefits for consumers in their dealings with property agents, as it can help to ensure services provided are suitable for meeting consumer and client needs.

In some other Australian jurisdictions, mandatory ongoing CPD requirements are imposed on property agents, being: New South Wales (NSW), Western Australia (WA), Tasmania and the Australian Capital Territory (ACT). However, the CPD models and annual requirements differ significantly across these jurisdictions.

This Consultation RIS provides decision-makers with a foundation on which to formulate policy, and lays out to stakeholders the reasoning on the preferred option regarding assessing whether the introduction of mandatory CPD for property agents in Queensland is required. In doing so, the nature of the problem was explored and alternative policy options to address that problem were identified, along with an assessment of each option's costs and benefits. This, along with other relevant information, is provided to assist with identifying the most suitable option.

The prime problem this Consultation RIS addresses is a market failure arising from the principal-agent problem. The current regulatory framework is designed with a focus to ensure that property agents act in the best interest of their clients. However, the principal-agent problem arises where an agent acts in a way that is contrary to the best interests of the principal. This view is supported by an examination of relevant complaints data and methods to address these complaints.

This Consultation RIS also found that the current regulatory regime and approach by the OFT is appropriate. Similarly, there were no specific social or equity concerns that were identified.

*'Introducing a mandatory CPD for property agents is a means of increasing the professional standards of property agents...'*





## Options to address the problem

In response to the problem that was identified, this Consultation RIS concludes professional development is necessary to ensure that property agents have a set level of competency. The alternative is potential failure to minimise risk to consumers (particularly vulnerable ones), an increase in disputes, and reputational damage to the industry, all of which carry an economic cost.

Given the Queensland Government's best practice approach to regulation, the costs and benefits of three types of regulatory CPD options were assessed against the base case of maintaining the status quo:

- **Option 1**  
Maintain the status quo.
- **Option 2**  
Introduce a light regulatory model—including a requirement to complete two CPD sessions annually.
- **Option 3(a)**  
Introduce a heavy regulatory model—including a requirement to complete 10 CPD points annually.
- **Option 3(b)**  
Introduce a heavy regulatory model—variation of Option 3(a), including a requirement to complete five CPD points annually.

Non-regulatory and co-regulatory options were also considered. However, it was determined such options were not appropriate for inclusion in this Consultation RIS, given the nature of the problem; the nature of the regulatory regime that applies to licensed property agents in Queensland; and the effective operation of the existing regulatory regime and enforcement approach by the OFT.

## Outcomes of consideration of options

While mandatory CPD is a means for property agents to maintain, increase and broaden their knowledge, skills and competence, which in turn, may reduce harm to consumers, it could also conceivably form a potential barrier to employment in the real estate industry.

Regardless of which option might be introduced, there would be some economic impacts resulting from the introduction of a mandatory CPD scheme. These may include:

- for property agents—direct training costs from meeting mandatory CPD requirements and income forgone from attending training
- for industry and businesses—notional cost of forgoing income or productivity, short-term and ongoing operational costs as industry adjust to business processes and systems to meet mandatory CPD requirements
- for the Queensland Government—initial costs for implementing a mandatory CPD scheme and ongoing operational costs for maintaining such a scheme.

Preliminary estimates of the reduction in consumer detriment flowing from reductions in complaints associated with introducing annual CPD do not appear to offset increases in costs imposed on industry or the Government.

The analysis highlights the significant incremental costs that would be imposed if a heavy regulatory regime replaced the status quo. A lighter regulatory regime like the one proposed in Option 2 imposes significantly less cost. It secures almost three times as much economic benefit for the relative cost of the heaviest regulatory option (Option 3(a)).

### **The recommended option is Option 2.**

Option 2 would impose both the least regulatory cost burden, and generate the largest benefit for cost imposed. It is important to note that over a ten year period this option would generate almost \$100 million of gross economic benefit.

# Purpose of a regulatory impact statement

The Queensland Government is committed to applying regulatory best practice principles to reduce the regulatory burden on the community and to ensure that where regulation is used it is efficient, effective and in the public interest.

*The Queensland Government Guide to Better Regulation* provides guidelines on the regulatory impact assessment process. All Queensland Government agencies must carefully assess the impacts of proposed laws and rules on business, the community and the government, as set out in the Guidelines. The Guidelines can be viewed at [www.treasury.qld.gov.au/resource/queensland-government-guide-better-regulation/](http://www.treasury.qld.gov.au/resource/queensland-government-guide-better-regulation/)

Consultation is an important way of improving the quality of legislation at all stages of the legislative development process. Where a regulatory proposal may provide a net benefit to the community but is likely to have significant adverse impacts on a section or sections of the community, a Consultation RIS is required.

A Consultation RIS provides the community with an opportunity to consider the options of the proposed legislation and its impacts. Stakeholder responses to a Consultation RIS give decision makers valuable information on which to base their policy decisions, and to avoid unintended consequences and unnecessary compliance burdens.

This Consultation RIS seeks to determine a preferred course of action in respect of a mandatory CPD scheme for property agents in Queensland, considering the costs and benefits of each option.

The structure of the Consultation RIS is as follows:

1. Identification of the problem.
2. Objectives of government action.
3. Consideration of options.
4. Impact analysis of the options.
5. Consultation.
6. Conclusion and recommended option.
7. Consistency with fundamental legislative principles and human rights.
8. Implementation, compliance support, and evaluation strategy.

Contractor Lytton Advisory Pty Ltd (Lytton Advisory) has assisted the Department with the preparation of this Consultation RIS, having been commissioned to undertake regulatory impact assessment of nominated sections relating to the identification of the problem, impact analysis of the options, and the conclusion and recommended option for a proposed mandatory CPD scheme for property agents.

## Disclaimer

This is a Consultation Paper only—it does not represent the policy of the Queensland Government, any state, territory or the Australian Government. While every effort has been made to ensure the accuracy of the information contained in this Paper, no responsibility is taken for reliance on any aspect of it and it should not be used as a substitute for legal advice.

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## Disclaimer

*This is a Consultation Paper only*





# Have your say

## How feedback can be provided

All property agents, industry stakeholders and members of the public are invited to comment on the issues identified and the proposals presented in this Consultation RIS.

Feedback will be accepted from Thursday, 1 September until Friday 30 September. Submissions can be made online, via email, or by post.

Online: [www.surveymonkey.com/r/TTFDYMC](https://www.surveymonkey.com/r/TTFDYMC)

Email: [propertyagentsCPD@justice.qld.gov.au](mailto:propertyagentsCPD@justice.qld.gov.au)

Mail: Property Agents CPD Consultation  
Locked Bag 180  
City East QLD 4002

All submissions received will be reviewed and published on the OFT's website unless the submission is marked as "confidential".

Following the consultation process, a Decision Regulatory Impact Statement (Decision RIS) will be prepared on agreed regulatory options. This will be published on the OFT's website. All respondents to the Consultation RIS will be notified via email when the Decision RIS is released.

The Consultation RIS considers three types of regulatory options to introduce mandatory CPD for property agents, in line with the Government's commitment to improve professional standards, protections, transparency and affordability for Queenslanders. It also considers an option to retain the status quo.

## Written submissions

When providing your written submission, it would be appreciated if you could indicate your preferred option and respond to the questions set out on pages 10 and 11, as relevant to you or your organisation.





## Questions

### General questions

- 1. What is your preferred option?**  
**Option 1**  
Maintain the status quo.  
**Option 2**  
Introduce a light regulatory model  
—including a requirement to complete two CPD sessions annually.  
**Option 3(a)**  
Introduce a heavy regulatory model  
—including a requirement to complete 10 CPD points annually.  
**Option 3(b)**  
Introduce a heavy regulatory model  
—variation of Option 3(a), including a requirement to complete five CPD points annually.
- 2. How many years have you worked in the real estate industry?**
- 3. Are you a member of a professional association? If so, which association are you a member of?**
- 4. Do you supervise other staff?**
- 5. Do you manage the business you work in?**

### Industry professionalism

- 6. How many hours a year do you spend on training or professional development?**
- 7. How accessible is the type of training you consider you need, or want to do?**
  - Please indicate on a scale of 1 to 5, with 1 = not accessible through to 5 = easily accessible.
- 8. What is the format of training you have previously undertaken?**
  - For example:
    - face to face during work hours
    - face to face after hours
    - online courses
    - conferences
    - industry events
    - reading.
- 9. What topics have you completed training in or plan to train in?**
  - For example:
    - practice management
    - client communication
    - negotiation skills
    - relationship development
    - trust account management
    - registration requirements.

### Areas of concern

- 10. Which of the following industry areas do you feel you need training in?**
  - For example:
    - financial
    - compliance issues
    - trust account
    - reputation
    - market changes (technology, internet, new entrants)
    - competition issues (networks multi-listing other)
    - risk management (practice-specific not advice for vendors, purchasers or tenants, other).



## Clients

- 11. Do you think consumers understand the role agents play in the property transaction process, and/or property management?**
- Please indicate on a scale of 1 to 5, with 1 = they have no idea through to 5 = they have a complete understanding.
- 12. Do you think consumers understand the processes involved in a property transaction and/or property management?**
- Please indicate on a scale of 1 to 5, with 1 = they have no idea through to 5 = they have a complete understanding.
- 13. Do you believe consumers understand the skills and knowledge required to work in the property industry?**
- Please indicate on a scale of 1 to 5, with 1 = they have no idea through to 5 = they have a complete understanding.
- 14. Below is a list of the most complained about consumer issues in the property industry. Based on your experience, please list the three you consider a priority.**
- Disputed Account or Invoice
  - Failure to Act Honestly, Professionally, Fairly
  - Misleading, Deceptive Conduct
  - Refunds
  - Unlicensed, Unregistered
  - Unsatisfactory or Non-performance of goods, products
  - Other (please specify)

## Perceptions of training

- 15. To what extent do you believe property agents need compulsory professional development?**
- Please indicate on a scale of 1 to 5, with 1 = not much is needed to 5 = regular, comprehensive training is needed.
- 16. How many days per year are you prepared to spend on professional development/training?**
- For example:
    - 1 day
    - 5 days
    - 10 days
    - More than 10 days
    - Other
- 17. Please select your preferred training formats from the list below:**
- Online self-paced
  - Face-to-face sessions
  - Webinars
  - Combination
  - Other (please specify)
- 18. How could regional agents (in regional areas) give the OFT feedback on what training is required each year?**

**Some general questions!**



# 1. Background

## Continuing professional development

### What is continuing professional development?

CPD is the process of the ongoing maintenance or enhancement of the knowledge, skills and experience related to an occupational group or profession following the successful completion of formal training. CPD may involve both technical and non-technical skills required for carrying out professional and technical duties. CPD is one of the key mechanisms by which standards of professional practice and the relevance and currency of qualifications and experience are maintained.<sup>2</sup>

CPD enables an employee's knowledge and skills to stay relevant and up to date. It develops a deeper understanding and a greater appreciation of the implications and impacts of the work they carry out. It helps advance the body of knowledge and technology within a profession. It increases confidence in individuals and the profession. In the present context, CPD has as its core the continual improvement of a property agent's skills, so agents can deliver a consistently higher quality of service that is up to date and fit for purpose, safeguards the public, meets the expectations of customers, and meets the requirements of the OFT and the industry.

CPD is generally considered a lifelong, systematic, and planned process to develop and maintain professional competence. The outcome has value for the individual, their employer, and other stakeholders such as the wider industry, regulators, government, buyers, sellers, property owners, tenants, and the general public. CPD is mandatory in many professions in Australia to maintain licences, registrations, accreditations, and memberships of professional organisations. Professions that require CPD vary by state and may include health and medical workers, engineers, accountants, plumbers, electricians, builders, and accredited solar installers. CPD is compulsory on licence renewal for property agents in NSW, WA, Tasmania, and the ACT.

Relevant Australian standards, regulations and safety practices change, and many are updated regularly. While many property agents attend workshops or training sessions when there are significant changes, not all do so. CPD can ensure licensed property agents are informed of the current standards, regulations, and practices.

### Previous national regulatory impact statements

In 2012, the Council of Australian Governments (COAG), the peak intergovernmental forum in Australia for policy reforms of national significance, released a Consultation Regulatory Impact Statement (RIS) on the *Proposal for national licensing for property occupations* (national Consultation RIS). COAG developed regulatory reforms to address deficiencies in the then licensing approaches in Australia by developing national licensing for certain occupational areas, including the real estate industry. The national Consultation RIS, amongst other things, broadly outlined policy proposals for the establishment of a national licensing system for property occupations.

In 2013, the national Decision RIS *Proposal for national licensing of the property occupations* explored whether mandatory CPD/skills maintenance should form part of the proposed National Occupational Licensing System (NOLS).

Specifically, the RIS process considered the need for a mandatory CPD scheme for real estate agents, and the costs and benefits of such a scheme. The national Decision RIS found that if a mandatory skills maintenance scheme was part of the proposed NOLS for property occupations, the training required would not always be aimed at addressing consumer risk and may result in additional, unwarranted burdens and costs on licensees in cases where additional training was not required and undertaken simply to meet a regulatory requirement.

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<sup>2</sup> The old distinction between the 'trades' and 'professions' has lost much of its meaning, and over recent years there has been an increasing trend towards professionalisation in all vocations.



Ultimately, the national Decision RIS did not support the inclusion of mandatory CPD requirements in the national licensing model and NOLS was discontinued in 2013. The RIS concluded that, *“(i)n view of the substantial costs and the range of existing CPD options available, and the limited evidence of the effectiveness of mandatory CPD, it is not proposed to include mandatory CPD requirements in national licensing.”* Rather, it was proposed that skills maintenance would be prescribed by the National Occupational Licensing Authority (NOLA) on an ‘as needed’ basis.

This determination was made after consideration of how CPD requirements had been applied over time in jurisdictions where mandatory CPD schemes already existed (NSW, WA, Tasmania and the ACT). The national Decision RIS estimated that removal of mandatory CPD requirements from those jurisdictions as part of the transition to NOLS would have provided an annual net benefit of approximately \$37 million.

*‘CPD is the process of the ongoing maintenance or enhancement of the knowledge, skills and experience...’*

## **Out of scope**

### **Queensland rental law reforms**

In 2018, the Department of Communities, Housing and Digital Economy (formerly the Department of Housing and Public Works) launched its Rental Law Reforms relating to residential tenancies. Regulatory impact analysis was undertaken as part of the review of the *Residential Tenancies and Rooming Accommodation Act 2008*. These reforms have relevance to resident letting agents and real estate agents licensed under the PO Act undertaking rental activities as part of their responsibilities. Any issues arising out of the rental reform process are out of scope for this Consultation RIS.





## Overview of property occupations legislative framework

Broadly, the PO Act provides for the regulation of the activities, licensing and conduct of property agents and their employees.

The key objective of the occupational licensing framework under the PO Act is to provide a system for licensing and regulating persons as property agents that achieves an appropriate balance between the need to regulate for the protection of consumers and the need to promote freedom of enterprise in the market place. One of the ways this objective is achieved is by ensuring only suitable people with appropriate qualifications are licensed or registered, and by providing protection for consumers in their dealings with licensees and their employees.

### Licensing

The PO Act regulates three categories of licensees (real estate agent, property auctioneer, resident letting agent) and registration certificate holders (real estate salesperson).

As at 30 June 2021, there was a total of 46,508 licences and certificates under the PO Act.

**TABLE 1:**  
**Property occupation licences and certificates as at 30 June 2021<sup>3</sup>**

Real estate agent licences	22,480
Real estate salesperson certificates	19,619
Resident letting agent licences	2,490
Property auctioneer licences	1,919
<b>Total</b>	<b>46,508</b>

A licence or registration certificate authorises the holder to engage in particular activities as an agent for others for reward.

- A real estate agent licence authorises agents to perform activities such as buying, selling (other than by auction), exchanging or letting real property or businesses, including collecting rents. Authorised activities may include owning or managing a real estate agency, and operating a trust account on behalf of sellers and buyers.
- A real estate salesperson certificate authorises a salesperson to perform any activity that may be performed by the real estate agent who employs them, unless the salesperson is registered with conditions. Salespersons may not conduct auctions or operate trust accounts.
- A resident letting agent licence authorises the agent to perform activities such as letting lots in a building complex and collecting rents for lots in a building complex. Authorised activities may include renting out and managing units in a building complex (on behalf of the owners and body corporate), collecting rents in the complex, and operating a trust account.
- A property auctioneer licence authorises auctioneers to sell any real property by auction. Real property includes dwellings, community title lots, businesses and vacant land. Auctioneers are also authorised to sell goods by auction if these are directly connected with a sale by auction of a place of residence or land.

Individuals are prohibited from performing these activities without an appropriate licence or registration certificate.

<sup>3</sup> Note: the CPD framework will not apply to limited licences issued under the PO Act.



## Educational or other qualifications

To be eligible for an individual licence (as opposed to a corporate licence) or registration certificate under the PO Act, an individual must be 18 years or over and pass the required training courses. An individual must possess the educational or other qualifications approved by the chief executive and these are stated on the [Office of Fair Trading website](#).

*‘Regulatory oversight for this training package lies with the Australian Skills Quality Authority...’*



## Property services training package

The OFT approves a number of competencies from the nationally recognised property services training package for each category of licence and registration certificate under the PO Act. Regulatory oversight for this training package lies with the Australian Skills Quality Authority (ASQA), the national regulator for Australia’s vocational education and training (VET) sector and regulatory body for registered training organisations (RTOs) in Queensland. New training requirements commenced in October 2021 (see [new training package](#) for new eligibility requirements), with the number of competencies required for each category outlined in Table 2.

**TABLE 2:**  
Number of required competencies to be eligible for a licence or registration certificate as of 1 October 2021

LICENCE/REGISTRATION TYPE (INDIVIDUAL)	REQUIRED COMPETENCIES
Real estate agent licence	19
Real estate salesperson registration certificate	12
Resident letting agent licence	15
Property auctioneer licence	10

Overall, the cost of individual units in the property services training package vary considerably, depending on the topic and RTO delivering the particular course. Generally, individual unit costs are determined by the market and are rarely sold individually, as a discount price is given for all training required for a licence or certificate category. Currently, a Queensland property agent’s annual costs for initial training might be up to \$2,500 (approximately), which is the average course fee for Certificate IV in Real Estate Practice (18 units); however this is an estimate only.



## Fees—licence and registration

To obtain or renew a licence or registration certificate, fees are payable for each licence category and registration certificate, as set out in Table 3.

**TABLE 3:**  
Fees for an individual licence (as opposed to a corporate licence) and for a registration certificate as at 1 July 2021.

LICENCE	FEES FOR ISSUE INCLUDING APPLICATION FEE OF \$175.60		FEES FOR RENEWAL INCLUDING APPLICATION FEE OF \$89.75	
	1 YEAR	3 YEARS	1 YEAR	3 YEARS
Real estate agent	\$1,508.60	\$2,828.60	\$766.45	\$2,126.75
Property auctioneer	\$1,508.60	\$2,828.60	\$766.45	\$2,126.75
Resident letting agent	\$1,508.60	\$2,828.60	\$766.45	\$2,126.75

REGISTRATION CERTIFICATE	FEES FOR ISSUE INCLUDING APPLICATION FEE OF \$106.80		FEES FOR RENEWAL INCLUDING APPLICATION FEE OF \$54.05	
	1 YEAR	3 YEARS	1 YEAR	3 YEARS
Real estate salesperson	\$354.00	\$601.50	\$177.75	\$431.65

*Note: fees are current as at 1 July 2021. A criminal history check (CHC) fee of \$39.55 will be charged for each person whose name is listed on an application. Other fees may also apply—please refer to Schedule 1 (Fees) of the Property Occupations Regulation 2014. Please also note, an applicant applying for additional licences need only pay an application fee of \$175.60 for each additional class, and does not need to pay an additional fee for issue.*

## Appointment of agents

Before a property agent can act as an agent for a person (a client) to perform an activity (a service) for the client, the client must first appoint the agent. A property agent and their client must fill out an appointment form (Form 6: Property occupations) in order to have a valid appointment. This form sets out, among other things, the services to be performed by the agent; the fees, charges and any commission payable for the service; and the expenses the agent is authorised to incur in connection with the performance of each service. A registered real estate salesperson working for an agency can sign this form on behalf of the licensed agent. Penalties may apply if a property agent acts on behalf of a client without first being appointed by that client.

## Property Occupations Regulation 2014

The Property Occupations Regulation 2014 (PO Regulation) is consistent with the main objective of the PO Act (that is, to provide a system for licensing and regulating persons as property agents that achieves an appropriate balance between the need to regulate for the protection of consumers and the need to promote freedom of enterprise in the market place).

The PO Regulation, amongst other things, prescribes conduct standards for property agents, including imposing obligations and disclosure requirements relating to accepting appointments to act where this would create a conflict of interest or where another agent has already been appointed; verifying property ownership and description; verifying facts material to the sale of property; and acting in accordance with client's instructions. Additionally, specific obligations and disclosure requirements are imposed on auctioneers relating to the registration of bidders, bids and acceptance of bids for the property, and bidder identity.





## Related legislation

While the PO Act is the principal industry specific legislation regulating property agents, it is important to note that other legislation also impacts on property agents. These other pieces of legislation impose different and specific obligations on property agents.

### Trust accounts

#### *Agents Financial Administration Act 2014*

Property agents are regulated by the AFA Act and Agents Financial Administration Regulation 2014 (AFA Regulation) in terms of how they deal with client funds in their trust account, with an aim to protect consumers from financial loss. The AFA Act and AFA Regulation support the consumer protection provisions of the PO Act by imposing trust account requirements on principal agents.

The AFA Act also establishes a claim fund, which is designed to compensate persons in particular circumstances, who suffer financial loss as a result of their dealings with licensed or registered property agents. Provisions in the AFA Act promote administrative efficiency for claims made against the claim fund.

The provisions of the AFA Act and AFA Regulation are particularly important as property agents deal with significant amounts of their client's money as part of their business transactions, holding these moneys in trust accounts on behalf of their clients.

The AFA Act also applies to agents regulated by the *Motor Dealers and Chattel Auctioneers Act 2014* (MDCA Act), which provides an occupational licensing framework for motor dealers and chattel auctioneers and motor salespersons. The mandatory CPD scheme is intended to apply only to property auctioneers regulated under the PO Act, and not to chattel auctioneers.

### National consumer law

#### *Australian Consumer Law—Competition and Consumer Act 2010 (Cth)*

#### *Fair Trading Act 1989 (Qld)*

The national Australian Consumer Law (ACL), which contains generic consumer protection provisions that operate broadly across the market place, may also impact property agents in particular circumstances—for instance, circumstances relating to unfair business practices.

The ACL is a national application law scheme which is applied as a Commonwealth law through Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and as a law of Queensland through the *Fair Trading Act 1989* (FT Act). In Queensland, the ACL is jointly administered and enforced by the OFT and the Australian Competition and Consumer Commission (ACCC).

### Compliance and enforcement

#### *Fair Trading Inspectors Act 2014*

The PO Act is further supported by the *Fair Trading Inspectors Act 2014* (FTI Act), which enacts common provisions for fair trading legislation, including the PO Act. In relation to property agents, the FTI Act mostly concerns the appointment and powers of inspectors and the procedures relating to the exercise of the powers for the purpose of enforcing the PO Act. The functions of an inspector include investigating, monitoring and enforcing compliance with the PO Act.

Broadly, OFT inspectors have legal authority to investigate alleged breaches of fair trading legislation by businesses and licensees, including specific breaches against the PO Act. Inspectors can investigate claims and complaints, conduct spot checks and take enforcement action in the event of a breach. An inspector can enter certain places to search the premises, seize possessions, and take copies of documents.



### **Fair trading compliance and enforcement processes**

The OFT is responsible for the administration of numerous pieces of consumer protection legislation, including the PO Act and FTI Act. The OFT compliance and enforcement policy (CEP) sets out the framework to administer consumer protection legislation, which is undertaken through education, compliance, administrative decisions, and enforcement activities. The compliance program ensures businesses consistently comply with fair trading legislation by conducting annual coordinated program of:

- educational activities—informing agents/businesses about their responsibilities under the law
- compliance monitoring—making sure agents/businesses are following the law
- enforcement activities—taking action when agents/businesses do not follow the law.

The OFT uses a range of escalating enforcement options and remedies, starting with those used in response to minor matters through to more serious matters. This escalating enforcement model may involve initial strategies including education and guidance, followed by warnings. As a result, there is a significant lead time before consideration is given to issuing an infringement notice or escalating the matter further.

These powers are particularly important in ensuring the enforceability of fair trading laws and regulations, including those relating to the PO Act.

### **Review process**

The administrative review process provides an opportunity for property agents who are affected by a decision made by the chief executive in relation to their licence or registration, to apply to have that decision reviewed. This is particularly relevant as certain decisions could have an impact on an agent's earning capacity, employment, or business. An external and internal administrative review process is available for property agents who are dissatisfied with a decision.

#### ***Queensland Civil and Administrative Tribunal Act 2009***

#### **Queensland Civil and Administrative Tribunal**

The PO Act provides property agents with external review rights for a decision made by the chief executive (reviewable decisions) and establishes the Queensland Civil and Administrative Tribunal (QCAT) with jurisdiction to review decisions relating to licensing or registration. QCAT is regulated by the *Queensland Civil and Administrative Tribunal Act 2009* (QCAT Act) and is considered a competent and independent tribunal empowered to deal with a range of matters in a consistent manner and in a fair, just, economical, informal and quick way.

More specifically, the PO Act provides an appropriate review process for a property agent through QCAT in circumstances where the chief executive decides to refuse the renewal of a licence or registration or decides to suspend a licence or registration. Typically, a power conferred on the chief executive in relation to a reviewable decision may be delegated to the Commissioner for Fair Trading, or to designated officers of the OFT.

#### **Supporting administrative internal review**

#### **Office of Fair Trading**

In addition to the external review process through QCAT, property agents may first seek remedy of a reviewable decision through the OFT's administrative internal review process, which is available to property agents prior to an agent exercising their rights to take the matter to QCAT.



## Jurisdictions with CPD requirements

Four Australian jurisdictions currently impose mandatory CPD obligations on property agents. These jurisdictions are NSW (since 2003), the ACT (since 2004), WA (since 2007) and Tasmania (since 2010). However, the CPD schemes and annual requirements differ significantly across jurisdictions.

**Appendix 1** of the Consultation RIS outlines the CPD requirements in other jurisdictions (as at 10 December 2021). Some key features of each CPD scheme are summarised in Table 4.

**TABLE 4:**  
**Key features of CPD requirements in other jurisdictions**

CPD	NSW	WA	TASMANIA	ACT
Points/hours	3–9 hours (depends on licence type)	10 points	Each licence condition specifies number of points needed.	12 points
Annual	23 March–22 March	1 January–31 December	Annual cycle, based on licence year.	Annual cycle
Mandatory activities	3 hours (1 hour per CPD topic)	3 points	Yes, from time to time	Not contemplated
Specifics	3 mandatory 3 electives 3 business skills	3 mandatory 7 electives	A condition on the licence will indicate how many points must be undertaken.	To be taken from 3 categories—any combination of 2 categories, and one must be category 3.
Conditions	None	Funding for 1 mandatory session once per calendar year.	Requirements on each licence vary.	Requirements vary according to when CPD training is taken.
Exemptions	Yes, but only in extenuating circumstances.	Case-by-case basis.	Yes	Yes
Retrospectivity or carried forward?	No	No	No, can't be carried forward but can be approved retrospectively.	Yes
Record keeping	Licence and certificate holders retain own records of completed CPD (3/4 years). Approved providers retain records for 4 years.	Property agents retain records of completed CPD (4 years). Approved providers must notify Regulator with attendance details.	Property agents to retain proof of attendance at CPD (2 years).	Property agents to retain a log of all CPD. If all CPD is from Category 3 then certificate from RTO is sufficient. Training providers issue statements of attainment indicating training is acceptable.
Consequences for non-compliance	Suspension or cancellation of licence or registration.	May result in issue of an infringement notice or disciplinary action, cancellation, suspension, refusal of licence or registration renewal.	Regulator may refuse to renew or may impose further conditions.	Cancellation of licence or registration.



Some features of the CPD schemes in other jurisdictions include that the relevant schemes may:

- apply to both licensees and to registered salespersons
- be based on topic areas or categories for the annual training requirements
- prescribe a specific number of points that must be accumulated or training hours that must be completed
- only consist of training and development opportunities approved by the regulator
- consist of training and development opportunities that can only be delivered by organisations approved by the regulator
- specify a particular, mandatory component that participants must complete each year
- include a specific training unit that can only be delivered by prescribed training organisations and that must be completed each year (in addition to elective units)
- impose reporting obligations on organisations that deliver the training
- impose prescriptive record keeping obligations on participants
- allow participants to carry forward excess points for a specified time;
- provide exemptions to participants in particular extenuating circumstances
- prescribe that training and development must be specific to the relevant jurisdiction's legislation and industry circumstances.

The number of hours a participant needs to spend on training and development or number of points to be acquired differs across jurisdictions. All jurisdictions impose consequences for failing to complete the training requirements each year, including the suspension or cancellation of a licence or certificate, ineligibility for licence or certificate renewal, the issuing of a fine or taking of disciplinary action.

*'All jurisdictions impose consequences for failing to complete the training requirements each year...'*



## 2. Identification of the problem

### Problem Identification

The nature of the Queensland property market and the roles of property agents can create problems for consumers. Clear identification of these problems is required to assess the regulatory impact of specific options. There were almost 7,000 complaints against property agents in Queensland reported to the OFT in the period 2017–2021.

The cost of licensing and registration of property agents and complaint investigation and resolution by the OFT during this period drew an estimated \$3.6 million annually from the Queensland Government budget. The estimated cost to the Queensland economy, including the budget impact, is approximately \$16.4 million per year. In present value terms, the cost to the Queensland economy is likely to be \$123 million over the next ten years.<sup>4</sup> The following discussion sets out how this problem is conceptualised and analyses the nature of the issues and the likely magnitude.

Table 1, reproduced below, presents the property occupation licences and certificates that are the subject of this Consultation RIS.<sup>5</sup>

**TABLE 1:**  
**Property occupation licences and certificates as at 30 June 2021<sup>3</sup>**

Real estate agent licences	22,480
Real estate salesperson certificates	19,619
Resident letting agent licences	2,490
Property auctioneer licences	1,919
<b>Total</b>	<b>46,508</b>

Source: Office of Fair Trading (2021)

Real estate agent licences and certificates comprise 90.5% of property occupation licences; resident letting agent licences comprise 5.4%; while auctioneer licences comprise 4.1%.

Table 5 summarises critical relationships in property service markets, focussing on the sale, purchase, leasing and management of real estate. It highlights the role of intermediaries between buyers and sellers, landlords and tenants, and broad types of property market services focusing on ownership transfer and leasing of property.

**TABLE 5:**  
**Categorisation of Property Market Services**

	SALE	PURCHASE	LEASE	MANAGE
Seller	X			
Landlord			X	X
Buyer		X		
Tenant			X	
Real estate agent	X	X		X
Resident letting agent			X	X
Auctioneer	X	X		

Source: Lytton Advisory

<sup>3</sup> Note: the CPD framework will not apply to limited licences issued under the PO Act.

<sup>4</sup> Assuming complaints growth of 1.7% p.a. based on population trends and a real discount rate of 7%.

<sup>5</sup> For the problem identification process, individual and corporate categories have been combined into a three-element categorisation: real estate agents, resident letting agents, and auctioneers.



## Problem concept

In Queensland's property markets, the vast majority of real estate transactions are facilitated by property agents acting in several different capacities. These roles are formally regulated under the PO Act.<sup>6</sup> The primary purpose of regulation under the PO Act is consumer protection.

Many of the regulations are designed to ensure that property agents act in the best interest of their clients. Where they do not, this behaviour can be considered an example of the principal-agent problem. A technical discussion of the principal-agent problem in this context is included at **Appendix 2** to this Consultation RIS.

The 2013 Decision RIS—*Proposal for national licensing of the property occupations* was examined to identify the relationship between the work undertaken at that time and the work for this Consultation RIS. A review of that relationship is included at **Appendix 3** as well.

## Nature of the problem

As part of problem identification, complaints data compiled by the OFT was analysed.<sup>7</sup> This considered complaints lodged with the OFT regarding auctioneers, real estate agents and resident letting agents in the period 2016 to 2021.<sup>8</sup> A multi-year data period is helpful. It provides a better sense of typical-year patterns of complaint, potentially capturing phases of the property market.

The OFT formulated a set of complaint categories<sup>9</sup> to classify the complaints it recorded in its dataset on the basis of how complaints were resolved:

- Below investigation threshold
- Complaint withdrawn
- Compliance advice letter sent
- Enforceable undertaking(s) obtained
- Infringement(s) issued
- Insufficient evidence of a breach
- Merged to master file
- No evidence of a breach
- Not investigated due to OFT policy
- Out of time
- Outside jurisdiction
- Referred elsewhere
- Referred for court/tribunal action
- Referred for spot check
- Referred to other agency
- Trader compliant following advice
- Unable to locate a trader
- Warning(s) issued.

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<sup>6</sup> Queensland Government (2014a).

<sup>7</sup> Note: this data may include complaints against chattel auctioneers, however, it is accepted that the majority of auctioneer licensees in Queensland are property related.

<sup>8</sup> It is important to note that evidence of a complaint is a leading indicator that there may be economic detriment, but not necessarily evidence per se. Not all complaints create significant economic detriment.

<sup>9</sup> Complaint categories were developed on the basis of OFT reporting requirements and focussed on OFT actions and outcomes. Nevertheless, they provide some insight into the nature of the complaints raised against property agents.



Table 6 presents the share of each of these categories attributed to auctioneers, real estate agents and resident letting agents. Significant values are highlighted in the table below.

**TABLE 6:**  
**Outcomes—number and share of complaints, 2017–2019**

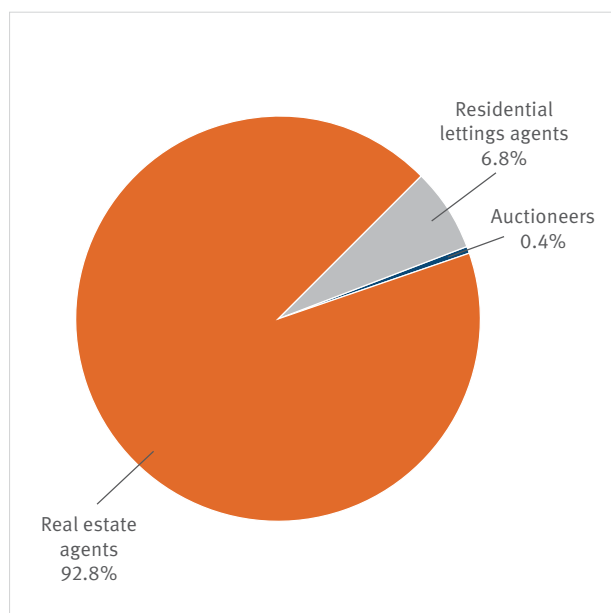
	NUMBER OF COMPLAINTS			SHARE OF COMPLAINTS		
	AUCTIONEERS	REAL ESTATE AGENTS	RESIDENT LETTING AGENTS	AUCTIONEERS	REAL ESTATE AGENTS	RESIDENT LETTING AGENTS
Below investigation threshold	0	8	0	0.0%	0.1%	0.0%
Complaint withdrawn	0	9	0	0.0%	0.1%	0.0%
Compliance advice letter sent	2	<b>1647</b>	67	0.0%	<b>25.1%</b>	1.0%
Enforceable undertaking(s) obtained	0	2	2	0.0%	0.0%	0.0%
Infringement(s) issued	2	<b>681</b>	61	0.0%	10.4%	0.9%
Insufficient evidence of a breach	1	<b>352</b>	45	0.0%	<b>5.4%</b>	0.7%
Merged to master file	0	9	0	0.0%	0.1%	0.0%
No evidence of a breach	0	<b>487</b>	42	0.0%	<b>7.4%</b>	0.6%
Not investigated due to OFT policy	0	74	10	0.0%	1.1%	0.2%
Out of time	0	43	3	0.0%	0.7%	0.0%
Outside jurisdiction	0	3	0	0.0%	0.0%	0.0%
Referred elsewhere	0	3	1	0.0%	0.0%	0.0%
Referred for court/tribunal action	0	50	0	0.0%	0.8%	0.0%
Referred for spot check	0	10	0	0.0%	0.2%	0.0%
Referred to other agency	0	6	0	0.0%	0.1%	0.0%
Trader compliant following advice	0	37	2	0.0%	0.6%	0.0%
Unable to locate a trader	0	15	0	0.0%	0.2%	0.0%
Warning(s) issued	20	<b>2664</b>	213	0.3%	<b>40.5%</b>	3.2%

Source: Office of Fair Trading (2021), Lytton Advisory analysis



Complaints against real estate agents accounted for just under 93% of the total, with almost 7% of complaints against resident letting agents. The number of complaints relating to auctioneers was negligible. This is shown in the figure 1.

**FIGURE 1:**  
**Complaints Volume, 2017–2019**

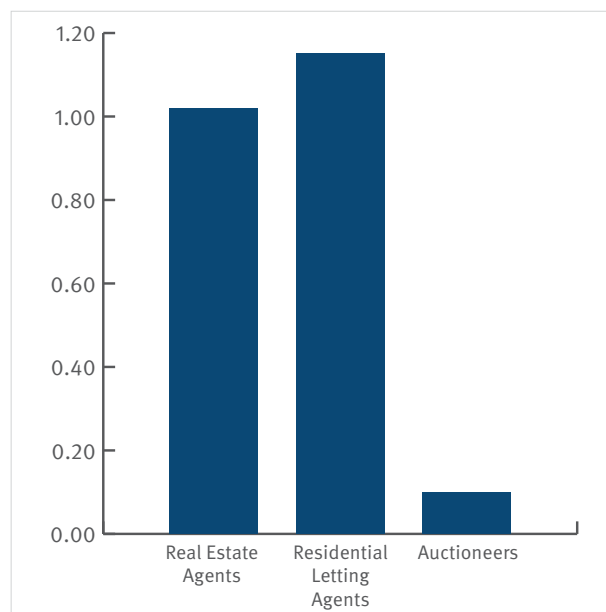


Source: Office of Fair Trading (2021), Lytton Advisory analysis

Given the larger difference in numbers of real estate agents, resident letting agents and auctioneers, it was also important to see whether the relative volume of complaints was significant. To test this, a set of complaint presentation ratios were developed for figure 2.

A ratio of 1 means a category of agents is represented in complaint data in proportion to its share of the total number of licensed and registered property agents. A figure greater than one means complaints are occurring at a proportion exceeding its share of agents.

**FIGURE 2:**  
**Agent complaint presentation ratios**



Source: Lytton Advisory







The resident letting agents category is overrepresented by 1.13 times their share of complaints handled by the OFT, which is significantly more than real estate agents (1.03 times) or auctioneers (0.10 times). The difference highlights that there are different issues in different segments of the property services market.<sup>10</sup> It also highlights that while the main problem area clearly relates to real estate agents, the intensity of complaints relates more to resident letting agents.

Five specific categories of complaints outcomes against real estate agents represented 88.7% of all complaints:

- Warning(s) issued
- Complaints advice letter
- Infringements(s) issued
- No evidence of breach
- Insufficient evidence of breach
- Other<sup>11</sup>.

The breakdown of these complaint actions is shown in figure 3.

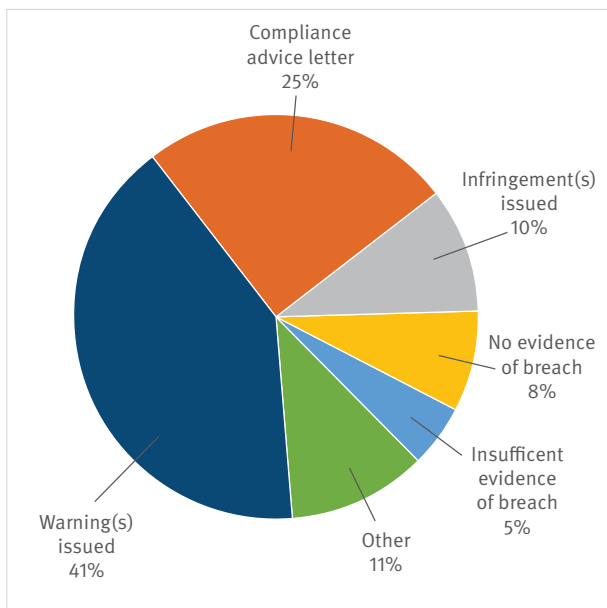
The profile of complaints significantly rests on the actions of real estate agents and not resident letting agents or auctioneers.

In summary:

- Two in five complaints resulted in warnings being issued.
- One in four complaints resulted in compliance advice letters being issued.
- One in ten complaints resulted in infringement notices being issued.

The approach developed above is based on OFT data regarding the way in which it resolved complaints. The above data reflected situations where multiple OFT actions were undertaken regarding some property agents.

**FIGURE 3:**  
**Categorisation of complaints, 2017–2019**



Source: Office of Fair Trading (2021), Lytton Advisory analysis

<sup>10</sup> Complaints regarding resident letting agents relate to their performance against the condition of the licensing. There are also a separate range of regulatory controls over residential tenancies. Where there are complaints regarding breaches of the *Residential Tenancies and Rooming Accommodation Act 2008*, these are referred to the Residential Tenancies Authority.

<sup>11</sup> 'Other' comprises all other complaint categories for real estate agents as well as all complaints against resident letting agents and auctioneers.



A further analysis examined the five-year complaints history of property agents based on how the OFT categorises the types of complaints received. The dataset developed by the OFT codes complaints into 556 distinct categories. Some categories provide minor differentiation of the issue being considered but remain important for reporting purposes. The following analysis condenses this into 58 categories shown in Table 7.

**TABLE 7:**  
**Property agent complaint categories**

Accept payment without intention to supply	Mail order
Auctions and mock auctions	Misappropriation of funds
Bait advertising	Misleading/deceptive conduct nec
Blowing, telefraud, invoice fraud	Misrepresentation about certain business activities incl home business
Cancellations/cooling off	Misrepresentation nec
Conduct other nec	No mandatory complaint handling in place
Contract pay out dispute, cancellation, interest rate	Non/partial supply, delay in supply
Contracts non-adherence to terms of contract	Offensive and distasteful representation
Damage/loss consumers property/goods, failure to insure	Online auctions
Defective goods	Packaging, labelling inaccurate, misleading
Deposits/bonds	Price, commission, charges
Discrimination	Pricing, commissions, charges nec
Disputed account or invoice	Quality, false misleading quality, value grade of goods, services
Door-to-door	Referral selling
Failure to account, trust accounts	Refunds
Failure to act honestly, fairly and professionally	Registration, licensing requirements not met
Failure to disclose negotiable commission	Repossession, hardship, over commitment
Failure to indicate minimum charge	Rights/responsibility not listed
Failure to indicate selling price	Safety/standards nec
Failure to release monies held in trust	Sales method not listed
Failure to supply information, documents/disclosures in required form	Sponsorship/approval, false representation of testimonial
False billing, unauthorised credit card transactions	Supply goods without statutory approval
False representation in relation to employment	Supply incorrect goods
Free gifts, special offers	Unauthorised repairs, unsolicited services, repairs
GST issue relating to price, refunds etc	Unlicensed, unregistered
Harassment, coercion	Unsafe product or service
Harsh and/or unconscionable conduct, contracts	Unsatisfactory or non-performance of goods, products
Incorrect or misleading weight, measure, quantity,	Unsolicited goods
Invalid practice, see comments	Warranties, supply, quality nec

Source: Office of Fair Trading (2021)

Note: nec is 'not elsewhere classified'



The number of complaints received for real estate agents, resident letting agents and auctioneers over the period 2016–17 to 2020–21 was analysed based on an updated data set compiled by the OFT. Results are presented in Table 8. The table only presents categories that comprise material numbers of complaints.<sup>12</sup> The three largest sources of complaints for each property agent segment and overall appear in bold below.

**TABLE 8:**  
**Analysis of complaint categories**

	AUCTIONEERS	REAL ESTATE AGENTS	RESIDENT LETTING AGENTS	OVERALL
Accept payment without intention to supply	2%			
Conduct other nec	7%	<b>18%</b>	<b>26%</b>	<b>19%</b>
Contracts non-adherence to terms of contract			3%	2%
Defective goods	5%			
Deposits/bonds		3%	3%	3%
Disputed account or invoice	4%	3%	2%	3%
Failure to account, trust accounts		2%	3%	2%
Failure to act honestly, fairly and professionally	3%	5%	8%	6%
Failure to release monies held in trust		2%	3%	2%
Failure to supply information, documents/disclosures in required form		3%	2%	3%
Harassment, coercion			2%	
Incorrect or misleading weight, measure, quantity,	3%			
Misleading/deceptive conduct nec	<b>13%</b>	<b>7%</b>	5%	<b>7%</b>
Misrepresentation nec	4%	3%		2%
Non/partial supply, delay in supply	8%			
Quality, false misleading quality, value grade of goods, services	3%			
Refunds	<b>20%</b>	6%	<b>10%</b>	<b>7%</b>
Unlicensed, unregistered	3%	4%	2%	3%
Unsatisfactory or non-performance of goods, products	<b>15%</b>	<b>26%</b>	<b>15%</b>	<b>24%</b>

Source: Office of Fair Trading (2021), Lytton Advisory analysis

<sup>12</sup> Only categories that represented at least 2% of the volume of complaints for a particular property agent segment or 2% overall are reported in the table as being material.



Analysis of this complaints data highlights that:

- 13 complaint categories addressed 89% of auctioneer complaints, with the most significant category being refunds (20%)
- 12 complaint categories addressed 83% of real estate agents complaints, with the most significant category being unsatisfactory or non-performance of goods, products (26%)
- 13 complaint categories addressed 86% of resident letting agents complaints, with the most significant category being Conduct other nec (26%).

Overall, there were seven significant categories of complaint that were common across property agents that addressed 69% of complaints:

- Conduct other nec (19%)
- Disputed account or invoice (3%)
- Failure to act honestly, professionally, fairly (6%)
- Misleading, deceptive conduct (7%)
- Refunds (7%)
- Unlicensed, unregistered (3%)
- Unsatisfactory or non-performance of goods, products (24%).

*‘Analysis of complaints...’*



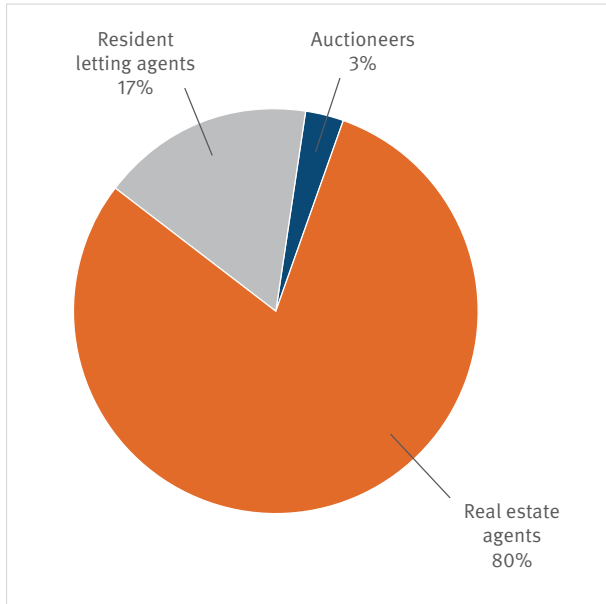


## Magnitude of the problem

The actions pursued by the OFT can be considered as a proxy for the potential impacts that are the subject of each complaint. The nature of these actions form the basis of the regulatory cost the government faces addressing these complaints. Where OFT responses are reasonable and commensurate with the issue being addressed, developing an ordinal impact ranking for these categories is possible. A **cost impact analysis** is developed in this Consultation RIS.

As part of assessing the magnitude of the problem, a five-year profile (for the financial years 2016–2017 to 2020–2021) of complaints against property agents was also extracted from the OFT data. This is summarised in figure 4.<sup>13</sup>

**FIGURE 4:**  
**Source of complaints, 2017–2021**

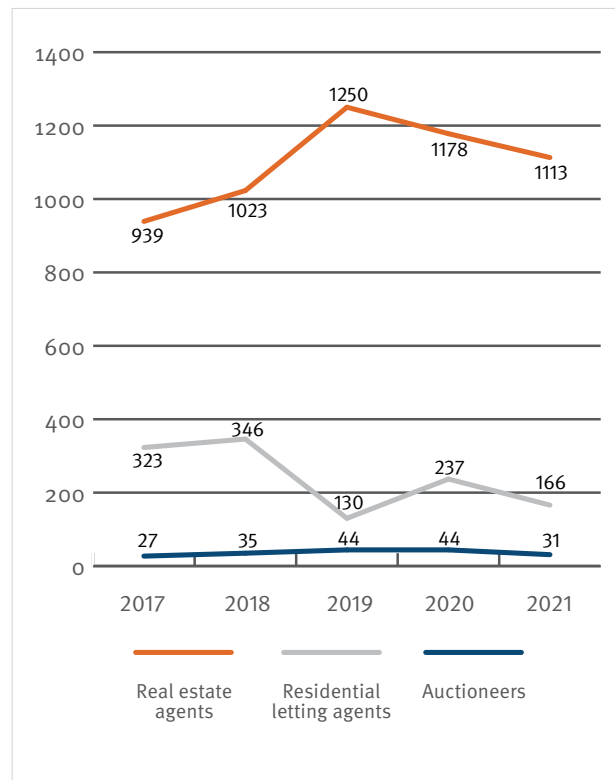


Source: Office of Fair Trading (2021), Lytton Advisory analysis

The overwhelming majority of complaints against property agents arise from real estate agents. They are the source of four out of five complaints. Less than one in five complaints are against resident letting agents. Auctioneers account for fewer than one in thirty.

Figure 5 shows how complaint trends have evolved over the past five years.

**FIGURE 5:**  
**Complaint volumes, 2017–2021**



Source: Office of Fair Trading (2021), Lytton Advisory analysis

<sup>13</sup> This enabled data up to 30 June 2021 which became available to be incorporated in the analysis. However, part year data for the financial year 2021-2022 was not included because a simple annualisation of figures could be misleading.



Three trends are discernible over the five-year period. Complaints against real estate agents appear in general to be going up, notwithstanding a peak in 2019. Resident letting agent complaints appear to be going down. Complaints against auctioneers appear relatively stable, although this is off a small base. However, it is important to look at these figures against the number of licensed and registered property agents in each category. This is shown for the 2021 financial year in Table 9.

**TABLE 9:**  
**Complaint rates, 2021**

	NUMBER	COMPLAINTS	COMPLAINT RATE
Real estate agents	41,500	1,113	2.1%
Resident letting agents	2,516	166	6.6%
Auctioneers	1,931	31	1.6%

Source: Office of Fair Trading (2021), Lytton Advisory analysis

The complaint rate for auctioneers is the least significant in both relative and absolute terms. Despite the volume of complaints against real estate agents, the complaint rate is marginally higher than for auctioneers. Significantly, resident letting agents have a complaint rate that is more than three times that of real estate agents, despite presenting a smaller volume of complaints.

An initial assessment of the significance of the problem examined each of the complaint categories. Then it rated them on a severity scale (1=relatively benign to 5=relatively severe) to assess the likely relative impact. This ordinal approach has been developed in the problem identification phase to inform the focus for effort on quantifying impacts in a 'business as usual' (BAU) case and options that are subsequently considered in this Consultation RIS. Table 10 shows how this scale was applied to each categorisation.

**TABLE 10:**  
**Assignment of Impact to Complaint Category**

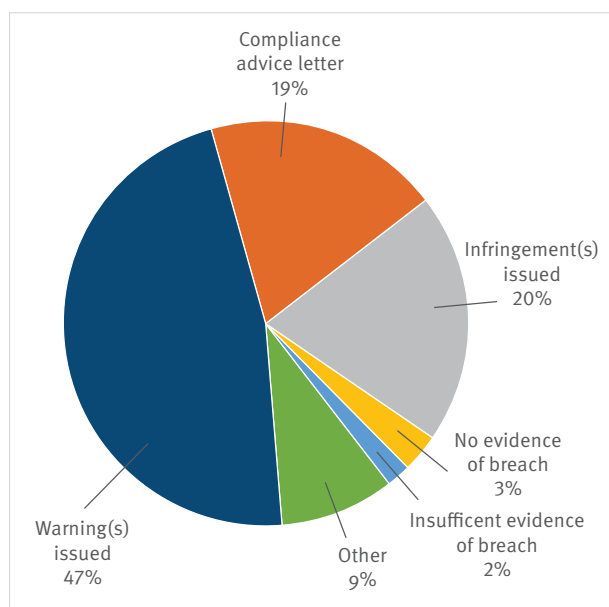
COMPLAINT CATEGORY	ORDINAL RATING	COMMENT
Warning(s) issued	3	Complaint requires a response but not necessarily a sanction. There is likely to be some impact on consumers.
Compliance advice letter	2	Complaint indicates potential lack of compliance by a licence holder or certificate holder. Warning of a potential breach that will have an impact on consumers.
Infringement(s) issued	5	Breach of licence/certificate conditions established. As a result, there is a strong likelihood of a negative impact on consumers.
No evidence of breach	1	Negligible impact on consumers.
Insufficient evidence of breach	1	Negligible likely impact on consumers.
Other	2	Potential there is some impact on consumers by other actions of real estate agents or resident letting agents and auctioneers.

Source: Lytton Advisory analysis



This ordinal impact categorisation was applied to the complaints identified in the OFT data set. Figure 6 shows where the magnitude of the problem is likely to rest. Sensitivity testing of the ordinal scoring did not materially affect the ranking of these categories. The main reason for this is the large number of complaints captured in a small number of categories across the property occupation licences and certificates.

**FIGURE 6:**  
**Relative impact of complaints**



Source: Lytton Advisory

Figure 6 highlights that the scale of the problem rests with the actions of real estate agents, as opposed to resident letting agents or auctioneers. Further in the categorisations of those relative impacts, the most significant consumer protection actions are warnings issued (47%), followed by infringement notices issued (20%). Compliance advice letters (19%) came a close third.

The preliminary impact assessment by Lytton Advisory highlighted a larger share relating to compliance advice letters and infringement notices because the severity of impacts addressed by these was rated as more significant than for warnings that were issued.

Two additional aspects were considered in assessing the magnitude of the problem. One estimates the cost to the government of addressing these complaints. This highlights the level of resources committed, which prevents the government from achieving other policy objectives. However, the order of magnitude of those costs also can highlight the extent to which investigating options to improve the regulatory environment is warranted. The other compares complaint rates for property agents across Australian jurisdictions. Higher complaint rates indicate a stronger propensity for property agents to breach standards to the detriment of their clients.

Data provided by the OFT indicates that Queensland spent approximately \$3.591 million per year monitoring property agents. This involved the following tasks:

- Undertaking compliance checking
- Pursuing court actions against property agents
- Conducting QCAT processes
- Payments for claims and receivership
- Maintaining and upgrading complaints systems
- Operating the licensing panel for property agents.

Without any change, the present value of this government activity is expected to be \$27.0 million over the next ten years.<sup>14</sup> From the above analysis, the magnitude of the problem appears significant enough to warrant regulatory attention. This seems to be reinforced by initial views expressed by industry participants.

14 Growth in complaints was assumed to be about 1.7% a year. A real discount rate of 7% was used.



## Initial industry perspective

As part of the problem identification process, an initial field survey of industry participants was conducted in February and March 2021. A response rate of 92% was generated from 1,543 surveys that were distributed.

Table 11 highlights industry responses to the question, “What do you believe are the main fair trading issues occurring within the industry?”<sup>15</sup>

**TABLE 11:**  
Industry perception of fair trading issues

ANSWER CHOICES	RESPONSES	
Trust account management	28.87%	412
Appointments to act	18.71%	267
Misleading or deceptive conduct	49.47%	706
Unlicensed traders	20.74%	296
Don't know	22.78%	325
Other (please specify)	10.37%	148
	Answered	1427
	Skipped	116

Source: Office of Fair Trading (2021)

Nearly half of respondents indicated that the main fair trading issue was ‘Misleading or deceptive conduct’, which reinforced the argument that the problem is a principal-agent one. Almost three in ten thought ‘Trust account management’ was significant and one in five said ‘Unlicensed traders’. ‘Appointments to act’ was also considered important.

*‘ Nearly half of respondents indicated that the main fair trading issue was ‘Misleading or deceptive conduct’...’*



<sup>15</sup> Industry perceptions provide an indication of potential issues. The survey results combine both potential causes and some outcomes. However, the level of economic impact is not explicitly determined from the results.





## Nature of the problem

The nature of the problem based on the economic concept of the principal-agent problem and the complaints data from the OFT as examined in the context of: market failure; regulatory failure; unacceptable hazard or risk to human health, safety or the environment; and social/equity outcomes, is outlined in Table 12.

**TABLE 12: Potential categories of problem identification**

	MARKET FAILURE	REGULATORY FAILURE	RISK MANAGEMENT	SOCIAL OR EQUITY CONCERNS
Problem or risk	A principal-agent problem creates moral hazard and adverse selection problems	Current regulatory arrangements are not providing effective consumer protection	Purchase compromised by non-disclosure of key property information	House sale and leasing costs are higher in regional areas  Access to property market information is not equitable
Underlying causes	Information asymmetry between real estate service providers and their clients	Resourcing of regulatory oversight  Education of industry sector  Level of continuing professional development  Lack of data and analysis on consumer complaints.	Failure to disclose to buyers/ tenants critical building information (asbestos, structure, etc.)  Not meeting regulatory disclosure obligations	Market conditions relating to property transaction volumes  Social bias in real estate networks  Potential discrimination based on race, gender, disability
Actual/potential magnitude	Medium	Low/Medium	Low	Low
Who is affected	Sellers Buyers Tenants	Sellers Buyers Tenants	Buyers	Tenants Buyers

Source: Lytton Advisory

Following examination of the complaints record of the OFT and survey results from industry participants, market failure is identified as the primary problem. The current regulation of property agents focuses on issues related to information asymmetry between sellers and property agents and landlords and property agents. One third of the impact of complaints was addressed by compliance letters which highlights this point. Further, almost half of the survey responses indicated this was an issue in identifying misleading or deceptive conduct as a fair trading issue.

The smaller number of infringement notifications suggests that regulatory failures are not as significant an issue. There was insufficient evidence to establish unacceptable hazards to human health and safety, or that there were significant social or equity considerations.

## Finding

With almost 7,000 complaints against property agents in a five year period—where complaints are being addressed regarding information differences between property agents and their clients—the prime problem this Consultation RIS addresses is market failure in the property services market arising from the principal-agent problem.

# 3. Objectives of government action

The primary objective of government action is to implement mandatory CPD for property agents to improve professional standards, protections, transparency and affordability for Queenslanders.

This Consultation RIS has been developed to consider whether a mandatory CPD scheme for property agents is warranted in Queensland.

In addition to the option to retain the status quo, this Consultation RIS considers options to support the government's objective. These options aim to:

- increase the knowledge and skill levels of property agents;
- deliver better-quality services for consumers by property agents and real estate businesses;
- lower the risks posed by property agents with lesser skills and by businesses offering less than optimal services;
- enhance consumer protection through improved property agent services;
- lower the complaint numbers and number of disputes relating to property agents;
- lower enforcement costs relating to the administration of compliance and enforcement actions; and
- lift public confidence in the real estate industry.

The recommended option is one that imposes the least regulatory cost burden while generating the largest benefit for cost imposed.

*'...for property agents to improve professional standards, protections, transparency and affordability for Queenslanders.'*



## 4. Consideration of options

The Consultation RIS presents four options, including a recommended option, Option 2. These options are detailed in a table in [Appendix 4](#) and summarised below.

### Option 1 Status quo

There are currently no requirements for property agents to undergo further or ongoing training after an initial licence or registration certificate has been obtained under the PO Act. Under this option, the current position will not change.

### Option 2 Introduce a light regulatory model

Key elements are:

- Amendment of the PO Act to require property agents to complete annual CPD requirements approved by the chief executive.
- Proposed that the chief executive would require property agents to complete **two CPD sessions each year**, comprising of **one session** from the national property services training package and **one session** from an annual chief executive approved list.
- The OFT would chair an administratively established Industry Advisory Panel to provide advice on suitable upcoming CPD sessions.
- Property agents would make a CPD compliance statement as part of licence or certificate renewal (which can be annual or every three years).
- Non-compliance with annual CPD requirements would impact on the ability of a property agent to renew their licence or registration.
- New property agents will be exempt from CPD requirements for the first 12 months from their licence or certificate being issued. This is on the basis that they will have recently completed the initial training requirements necessary to obtain the relevant licence or certificate, and CPD would therefore be duplicative.

**Option 2 is the Recommended Option.**

### Option 3(a) Introduce a heavy regulatory model

Key elements are:

- Amendment of the PO Act to require property agents to complete annual CPD requirements approved by the chief executive within a points-based CPD framework.
- Proposed that the chief executive would require property agents to complete **10 CPD points annually**, comprising of **six points from mandatory activities** and **four points from elective activities**, with points to be allocated for specific CPD activities by the OFT only in accordance with a set points system.
- The OFT would chair an administratively established Industry Advisory Panel to provide advice on suitable upcoming CPD activities.
- Property agents would provide annual CPD compliance information and proof-of-completion documentation to the OFT (separate from renewal).
- Non-compliance with annual CPD requirements for two years or more would be a ground for suspension of a licence or registration certificate.
- New property agents will be exempt from CPD requirements for the first 12 months from their licence or certificate being issued. This is on the basis that they will have recently completed the initial training requirements necessary to obtain the relevant licence or certificate, and CPD would therefore be duplicative.



## Option 3(b) Introduce a heavy regulatory model (lesser variation of Option 3(a))

Key elements are the same as Option 3(a) with two (2) differences, which are:

- Proposed that the chief executive would require property agents to complete **five CPD points annually**, comprising of **three points from mandatory activities** and **two points from elective activities**.
- Each year, in addition to the Industry Advisory Panel advice, the OFT would assess property agents' complaints data and provide advice to the chief executive on matters that could be addressed in the CPD activities for the coming year.

## Reasons some options have not been included

Besides the regulatory options outlined in this Consultation RIS, the Department also considered both non-regulatory and co-regulatory options. The Department concluded that these approaches did not present as feasible policy options for inclusion in this Consultation RIS, with the reasons for non-inclusion detailed in the following section.

## Non-regulatory option

The Department considers a non-regulatory response would not be appropriate to include in this Consultation RIS, as it would not address the problem identified in this Consultation RIS.

The Problem Identification section concludes that a failure in the market warrants the consideration of a CPD scheme for the property industry. To address this problem, the appropriate option needs to go beyond a non-regulatory response—that is, a response that does more than what is currently being done in a regulatory sense, while complementing the existing regulatory measures currently in place.

The OFT administers a regulatory framework which aims to ensure agents and real estate businesses consistently comply with fair trading legislation by conducting annual coordinated programs through educational activities, compliance monitoring and enforcement activities.

Accordingly, since the Problem Identification section of this Consultation RIS found that the current regulatory regime and approach by the OFT is appropriate, these existing measures can continue to be used in support of any CPD scheme eventuating for property agents as a result of this RIS process.



## Co-regulatory option

### Industry CPD programs

The Department considers a co-regulatory option would not be appropriate to include in this Consultation RIS.

Co-regulation is generally characterised by situations where industry develops and administers its own arrangements, but government provides legislative backing to enable the arrangements to be enforced.

The Department is aware that some peak industry bodies within the Queensland real estate property market currently administer CPD programs for their members, which must be completed to maintain the membership status with that industry body. Typically, members are required to complete certain CPD training each year by a certain date. Generally, the purpose of industry-led CPD programs is to promote best practice and compliance in order to give members a competitive edge over other property agents. Furthermore, industry CPD programs are meant to inspire confidence in consumers that by choosing a member, they are choosing the best of that profession.

The work of property industry bodies to improve the professionalism of their membership is commendable. However, there is potential that any proposed CPD model involving particular property industry bodies, authorised to exercise some level of responsibility as part of a government CPD framework, could raise some real and perceived issues. Some examples are considered below.

### Enforcement process

The OFT administers an escalating enforcement model, which engages a range of escalating enforcement options and remedies, starting with those used in response to minor matters through to more serious matters. These may include a formal written warning, infringement notice, civil penalty notice, enforceable undertaking, disciplinary action, prosecution, or civil or criminal proceedings.

There is a real concern that involvement of an industry body could undermine the OFT's existing compliance and enforcement measures if that industry body is made responsible for particular functions—for example, for the collection of evidence or obtaining of documents relating to CPD. The legitimacy of any evidence gathered could be called into question, particularly where this has inadvertently been obtained in an improper or illegal manner.

### Conflicts of interest/vested interests

Typically, the core business of property industry bodies is attracting members. That property industry body then services that membership by undertaking political advocacy on behalf of members and the profession; providing property research, advice and training to members; acting as a source of real estate products and services; and providing a platform for dispute resolution between member agents.

There may be a conflict of interest if an industry body is given responsibilities that impact licensees and registered persons in substantially different ways, particularly if the impact has a negative effect on licensees or registered persons who are not members of that particular industry body. It could be perceived that industry members are being favoured in any decisions made by the industry body they are members of.

Furthermore, it could be perceived that any industry body with a heavy involvement in the CPD framework has a vested interest in the success of a co-regulatory arrangement, as this could deliver economic benefits for them such as increased membership.

# 5. Impact analysis of the options

## Summary of the costs of CPD

The regulatory costs of CPD over one year for the proposed regulations are calculated at around \$59,204,868 (Present Value) for Option 2, around \$168,586,250 (PV) for Option 3(a), and \$101,871,384 (PV) for Option 3(b). This compares with a base case cost estimate of \$45,887,433.

While these costs appear large, for Options 2, 3(a) and 3(b), these are spread over 23,214 licensees who are not undertaking CPD as part of their membership of a professional association or on a voluntary basis or having just completed their qualifications. Of these costs for Option 2, \$7,057,056 is attributable to direct training costs while \$12,489,132 represent income forgone from attending training.

For Option 3(a), \$35,285,280 is attributable to direct training costs, while \$85,056,096 represents income forgone from attending training.

For Option 3(b), \$17,642,640 is attributable to direct training costs, while \$41,669,130 represent income forgone from attending training. The costs of training consist of \$250 to \$400 for the cost of a 4-hour course.

The other significant cost is the notional cost of forgoing income or productivity. For example, if a self-employed property agent undertakes an 8-hour training course of CPD, in that case, that represents one day's absence from income-earning activities. In contrast, a day's absence for an employee of a property agent imposes a day's lost productivity on the employer. Taken together, CPD training per property agent is around \$304 per day (at \$38/hour).

The OFT costs are (using the 2019–20 OFT Outcomes Report) currently approximately \$27,141,300 per year in terms of current enforcement of regulations for licensing, education, compliance checks and enforcement for all regulated occupations. The OFT employs 212.3 full-time equivalents (FTEs).

It is estimated that the OFT currently incurs an estimated \$3,591,538.64 for activities devoted to property agents. The proposed reforms being considered are assumed to lead to a reduction in complaints by consumers about property agents, and this will see a decrease in expenditure and staffing associated with enforcement actions. Baseline costs for the OFT are not included in the estimates.

Consumer benefits are calculated from improvements in the performance and efficiency of property agents and a reduction in complaints. It is estimated that consumers will benefit by around \$3,350 from each complaint that can be avoided. At this point in time, it is difficult to estimate the costs that consumers bear for problems related to incomplete information and the actions of property agents not working in their favour. However, this analysis tries to use previous work on the gaps between prices when agents work for themselves instead of a client to indicate the problems being faced due to principal and agent failure.

Decreases in complaints being made by consumers have followed the introduction of CPD in several jurisdictions. For example, in WA, reductions of 60-70% in complaints were observed. In NSW, complaints decreased by 43%. Therefore, it has been conservatively assumed that Option 2 would see a reduction of 25% in complaints and losses from current practices, Option 3(a) would see a 50% reduction, and Option 3(b) would see a 35% reduction.

### What is a cost-benefit analysis?

Costs and benefits are terms used to describe the negative and positive effects of a proposal. A cost-benefit analysis (CBA) should be assessed systematically and objectively to identify the option likely to be of greatest net benefit to the community. Summary tables comparing the impacts of different options are included below. To enable comparison between time, amendments to the estimated economic costs include specific accounting of the time value of money and the opportunity costs of alternative uses. In this paper, it is assumed that the discount rate used will be 7% with sensitivity testing at 4% and 10%.



## How can cost-benefit analysis assist with considering options?

CBA is often used to appraise the desirability of a given policy. It is an analysis of the expected balance of benefits and costs, including an account of any alternatives and the status quo. It helps predict whether the benefits of a policy outweigh its costs (and by how much), relative to other alternatives. This allows the ranking of alternative policies in terms of a cost-benefit ratio.

Generally, an accurate CBA identifies choices which increase welfare. Assuming an accurate CBA, changing the status quo by implementing the alternative with the lowest cost-benefit ratio can improve Pareto efficiency. Although CBA can offer an informed estimate of the best alternative, a perfect appraisal of all present and future costs and benefits is difficult, and should be used to assist with decision-making rather than lead on the final choice of alternative options.

For proposed new or amending legislation, the costs and benefits relate to changes compared to what would have happened in the absence of the proposal. In other words, the incremental costs and benefits are measured using the status quo of the 'no action' option. It is inappropriate to merely calculate incremental costs and benefits compared with the 'status quo' unless no further changes would have resulted in the absence of the proposal. It is assumed in this study that there will be a gradual increase in complaints and the associated impacts on consumers and the community over time in line with the growth in population.

The value of a CBA depends on the accuracy of the individual cost and benefit estimates. This analysis has sought to include only the significant costs in that analysis that will influence its outcome. The assumptions underlying these estimates have been on the conservative side and linked to existing data and studies when available.

## Why is the government considering action?

The Problem Identification section identified there were 6,886 complaints against property agents in a five-year period (2016–17 to 2020–21). Most of these complaints addressed information differences between property agents and their clients. Consequently, the prime problem this Consultation RIS addresses is a market failure arising from a principal-agent problem.

In Queensland, the OFT exercises its regulatory powers in the public interest. In enforcing compliance with relevant national and state consumer laws, the OFT aims to serve the public by pursuing outcomes that maintain competitive and fair markets for all consumers. For this reason, there must be a public benefit for every enforcement action. Hence, from the approach set out in the legislation and regulations,<sup>16</sup> the objectives in taking an enforcement action include:

- Stopping unlawful conduct.
- Ensuring future compliance.
- Raising awareness of the law.
- Deterring and punishing wrongdoers.

A consideration for the public interest is also the efficient use of public resources, so:

- The resource cost of a particular action is relevant.
- The use of lower-cost compliance tools is favoured where these address non-compliant conduct effectively without resorting to more costly court action.
- A broad legislative or regulatory response may be more appropriate.

The development of mandatory CPD for all property agents should be considered in terms of the action seeking to lower the cost of enforcement. The changes in the level of complaints (and the cost of those enforcement actions) can be seen as a secondary benefit in both the numbers and in terms of total costs and the loss of consumer surplus, and the reduction in the inefficient operation of property agents. For example, the trend in current complaints totalled 6,886 over five years (2016–17 to 2020–21) in Queensland. This is around 1,377 per year. It is assumed that these complaints will grow by 1.7% per year (Queensland population growth rate)<sup>17</sup> after that period.

<sup>16</sup> PO Act and the PO Regulation.

<sup>17</sup> Queensland population growth estimates drawn from Queensland Statistician's Office.



## Property operations and real estate businesses

Nationally, the Australian Bureau of Statistics (ABS) figures show that in 2015–16, total income relating to businesses that identify as ‘property operators and real estate services’ was \$131.3 billion (of which \$102.9 billion was from ‘sales and service income’); total expenses were \$71.8 billion and operating profit before tax was \$59.3 billion.

## Dealing with risks and mitigating them

There are a considerable number of risks that are relevant to the activities of property agents. An outline of the provisions of the PO Act provides a broad list of prescribed conduct and prohibited behaviour. In addition, some specific issues and risks are relevant to different property market sectors, and these represent risks that also have potential for consumer detriment. For example, property agents require an understanding of conveyancing practices and law, and can also be sought after to provide general investment advice.<sup>18</sup> Further, selling rural properties or acting as a buyer’s agent all require specific knowledge and skill. Still, for simplicity, this study assumes that the training undertaken is appropriate for the occupation category. For this reason, these areas should be considered as being covered as part of any minimum educational standard for auctioneers, real estate agents and resident letting agents.

However, for laws covered by other departments or governments, it is less clear that minimum standards should cover these. This does not mean that these issues are not important. However, following the proposal that there should be mandatory training for all these matters, this could end with a need to provide training for a variety of issues. The notion that risks are ‘incalculable’ simply avoids the issue and suggests that training should be infinite. There must be some logical boundary. The legislation administered by the OFT as the licensing authority, would seem to be an appropriate point of delineation.<sup>19</sup>

The final category is risk that may result in consumer detriment but apply to any business. These risks arise from managing people, selecting staff, and providing leadership. Other issues include risk management and strategic planning. These are risks that appear only for the principal licensee and where there are business management and supervisory responsibilities. While not specific to the CPD, a review of training by the NSW Government in 2016 did find that mentoring by senior and experienced staff is a critical part of staff training. However, its importance can be overlooked as the practices, norms and operation of staff generally reflect feedback given at the workplace through staff assessments and informal guidance given to correct deficient practices and reduce the number of mistakes made by new staff.

Regardless of the development of an agreed CPD scheme, the OFT must continue to manage the risks associated with:

- the general conduct of licensees and registered persons
- agency agreements
- residential property and rural land sales
- auctions
- trust accounts and records
- Fair Trading and Australian Consumer Law requirements
- residential tenancies.

Thus, the balance between the responsibility of each individual property agent and the role of government in providing the right environment for open business operations is an important discussion. However, the Problem Identification in this Consultation RIS did not find that the current regulatory regime and approach by the OFT was inappropriate. Similarly, there were no specific social or equity concerns that were identified.

<sup>18</sup> Noting that specific advice on financial investment should be sought by a holder of a Financial Services licence issued by the Australian Securities and Investments Commission (ASIC).

<sup>19</sup> Commentary on other legislation is beyond the scope of this consultation. Nevertheless, where legislation administered by other departments or governments is important and creates a specific risk to consumers, it could be the subject of mandatory professional development. For example, significant issues might include anti-discrimination and work health and safety provisions and real estate specific regulations, such as those dealing with pool fencing.





## Potential costs of CPD

There are several types of costs associated with CPD options. These may include:

- The actual dollar cost of attending CPD training (incurred by the property agent or business).
- Income forgone while attending the CPD training (notionally incurred by the property agent or business). A person's time (forgone income earning time) is expected to be equivalent to \$38 per hour.
- Administrative costs to business or individual property agents of submitting proof of CPD attainment (licence holders will need to upload or send a copy of their certificate of completion to the OFT). A review of other desktop compliance suggests that this would take around 1 to 2 hours per year.<sup>20</sup>

While property agents or their employers bear these costs in the first instance, it is likely that they will be passed on to consumers through lower consumer surplus. This is because there are few substitutes, if any, for the demand for property services (i.e. this is known as inelastic demand). This provides a market condition whereby costs can mostly be passed on. There are no specific figures on owner sales, but they are assumed to remain a relatively small amount of all retail sales as most individuals will sell and buy a home only a few times in their lifetime.<sup>21</sup>

The analysis provides a simplified assessment of possible and identified impacts that may include specific direct and indirect costs on producers, commercial operations and consumers from activities related to the actions of implementing CPD.

GROUP	COSTS	BENEFITS
Property agents	Registration. Licensing. Compliance with legislation and regulation. Training and professional development. Responding to enforcement (compliance letter, infringement notice and court action).	Better trained staff are more productive by making fewer mistakes. Higher return from house sales and rentals. Fewer complaints related to a lack of knowledge or awareness of regulations.
Government	Regulation of industry—licensing. Compliance. Education and information. Enforcement actions (compliance letter, infringement notice and court action). Review and/or approval of appropriate training courses.	Reduced enforcement costs from investigation of complaints and fewer compliance letters, infringement notices and court cases.
Consumers and general community	Time cost of making complaints and participating in civil action. Losses from asymmetric information (principal-agent and moral hazard). Reduction in Competition (barriers to entry to agents).	Protection from unfair business practices, fraud actions, misrepresentation, and product liability. <sup>22</sup> Better trained staff are more productive by making fewer mistakes. Higher return from house sales and rentals. More information on agents enables improved consumer decisions of choosing agents.

Source: Lytton Advisory 2021

<sup>20</sup> These compliance and annual review costs are included in the estimates for costs imposed on property agents. It is assumed that 1 hour is spent working on these matters for Option 2, 3 hours for Option 3(a), 2.5 hours for Option 3(b).

<sup>21</sup> CoreLogic in 2015 found that the average number of years a capital city house is owned climbed from 6.8 years in 2005 to 11.3 years in 2019.

<sup>22</sup> Please see the Problem Statement which notes the ACL and enhanced consumer protection under the PO Act and the PO Regulation.



## What are the specific options being considered?

Three options, including a BAU case (or status quo), are being considered in response to the problem identified. They are described as:

- Option 1: Status quo.
- Option 2: Introduce a light regulatory model.
- Option 3(a): Introduce a heavy regulatory model.
- Option 3(b): Introduce a heavy regulatory model (lesser variation of Option 3(a)).

A high-level summary of each option is set out in Section 4. The costs to government of implementing additional compliance requirements compared to the status quo are based on estimates prepared by the OFT.<sup>23</sup>

**Appendix 4** outlines information on the options as drafted by the Department.

**OPTIONS BEING  
CONSIDERED!**



<sup>23</sup> Review of general ledger data supporting the costing of OFT operations regarding property agent regulation is outside the scope of this RIS.



Table 13 explains the elements of the reform, the expected additional requirements, some of the assumptions, and an explanation of the outcomes expected from the reform process.

**TABLE 13:**  
**Examining the options**

OPTIONS	OPTION 1	OPTION 2	OPTION 3(a)	OPTION 3(b)
Matters to be considered	Business as usual (no changes)	Formal training (light)	Formal training (heavy)	Formal training (heavy)
<p>Elements</p> <ul style="list-style-type: none"> <li>• Legislation</li> <li>• Administrative framework (communication and education)</li> <li>• Information technology (IT) system; licensing process; industry panel</li> <li>• QCAT appeals process</li> <li>• Education and training materials</li> <li>• Compliance measures and non-compliance enforcement actions</li> <li>• Review of rights and responsibilities of parties.</li> <li>• Power to request information</li> <li>• Staffing and time allocation (especially extra staff).</li> </ul>	<p>Current operational costs for the OFT through the operation of normal actions and community-based training and information.</p>	<p>The chief executive would define CPD requirements that would be met by property agents on an annual basis.</p> <p>Additional operational costs from the operation of the mechanism. These would include:</p> <ul style="list-style-type: none"> <li>• Advisory panel</li> <li>• Process of administrative review and appeal</li> <li>• Spot checks on compliance</li> <li>• Education and messaging</li> <li>• System support and development</li> <li>• Industry licensing and registration</li> <li>• Case management</li> <li>• Program strategy and development.</li> </ul>	<p>Similar to Option 2, new elements would include:</p> <ul style="list-style-type: none"> <li>• Advisory panel</li> <li>• Process of administrative review and appeal</li> <li>• Spot checks on compliance.</li> <li>• Education and messaging.</li> <li>• System support and development</li> <li>• Industry licensing and registration.</li> <li>• Case management.</li> <li>• Program strategy and development.</li> </ul> <p>10 mandatory and elective points would be required:</p> <ul style="list-style-type: none"> <li>• Amend the PO Act to create a points system.</li> <li>• QCAT review</li> <li>• Process of administrative review and appeal</li> <li>• Spot checks on compliance.</li> </ul>	<p>Similar to Option 2, new elements would include:</p> <ul style="list-style-type: none"> <li>• Advisory panel</li> <li>• Process of administrative review and appeal</li> <li>• Spot checks on compliance.</li> <li>• Education and messaging.</li> <li>• System support and development</li> <li>• Industry licensing and registration.</li> <li>• Case management.</li> <li>• Program strategy and development.</li> </ul> <p>5 mandatory and elective points would be required:</p> <ul style="list-style-type: none"> <li>• Amend the PO Act to create a points system.</li> <li>• QCAT review</li> <li>• Process of administrative review and appeal</li> <li>• Spot checks on compliance.</li> </ul>



**TABLE 13:**  
**Examining the options *continued***

OPTIONS	OPTION 1	OPTION 2	OPTION 3(a)	OPTION 3(b)
Matters to be considered	Business as usual (no changes)	Formal training (light)	Formal training (heavy)	Formal training (heavy)
Assumptions	<p>Industry continues to grow, and the number of real estate transactions and their value will increase.</p> <p>Complaints will continue to increase.</p> <p>More resources from the government to support the work of responding, investigating, and making decisions.</p> <p>Legal costs for real estate agents and consumers that must be represented or appeal specific decisions by the Department.</p>	<p>Better trained agents and forcing poorly performing ones to no longer practice.</p> <p>Light touch approach to regulation so compliance is less than a formal CPD system.</p> <p>Reduction in complaints, investigations, and actions by 25%</p>	<p>Better trained agents and forcing poorly performing ones to no longer practice.</p> <p>Reduction in complaints, investigations, and actions by 50%.</p>	<p>Better trained agents and forcing poorly performing ones to no longer practice.</p> <p>Variation of Option 3(a) CPD program with reduced points that requires 5 points completed per year.</p> <p>Reduction in complaints, investigations, and actions by 35%.</p>
Issues to be considered	<p>Current complaints</p> <p>Loss of funds and operation of the OFT work to process the support to consumers.</p> <p>Current education and information for the industry and consumers may need to increase.</p> <p>Consideration of current inefficiencies in the sector from poor training, weak understanding of the legislative requirements or lack of compliance.</p>	<p>Number of complaints is likely to fall.</p> <p>Use of current curriculum.</p> <p>Time lost to undertake training.</p> <p>Promoting and educating the industry and consumers about the training reforms.</p> <p>Operation of Advisory panel (meeting and incidental costs).</p> <p>Licensing and registration costs (should be the same but spot checks).</p>	<p>Number of complaints is likely to fall.</p> <p>Review and approval of specific CPD items.</p> <p>Certification of trainers.</p> <p>Time lost to undertake training.</p> <p>Promoting and educating the industry and consumers about the training reforms.</p> <p>Operation of Advisory panel (meeting and incidental costs).</p> <p>Licensing and registration costs (new IT and compliance mechanism).</p>	<p>Number of complaints is likely to fall.</p> <p>Review and approval of specific CPD items.</p> <p>Certification of trainers.</p> <p>Time lost to undertake training.</p> <p>Promoting and educating the industry and consumers about the reforms.</p> <p>Operation of advisory panel (meeting and incidental costs).</p> <p>Licensing and registration costs (new IT and compliance mechanism).</p>

Source: Initial OFT Information in Elements section with analysis by Lytton Advisory 2021



## OFT costs related to Implementation

GOVERNMENT		OPTION 1	OPTION 2	OPTION 3(a)	OPTION 3(b)
Percentage of agents checked		5%	10%	25%	20%
Agents compliance checked		2,325	4,651	11,627	9,302
Hourly rate (government staff)		\$45	\$45	\$45	\$45
Hours per agent		1	1	2	1
Total cost to government per annum		\$104,643	\$209,286	\$1,046,430	\$418,572
Court, police and OFT time for courts		\$151,008	\$113,256	\$75,504	\$98,155
QCAT		\$13,728	\$10,296	\$6,864	\$8,923
payments for claims and receiverships		\$1,097,267	\$822,950	\$548,633	\$713,223
System Support and Development upgrade		\$ -	\$20,000	\$55,000	\$55,000
Industry Licensing Unit					
	Advisory panel	\$ -	\$3,000	\$3,000	\$3,000
	Additional staffing	\$ -	\$214,821	\$294,855	\$294,855
Complaint Unit	Additional staffing	\$ -	\$20,000	\$20,000	\$20,000
CPD monitoring	Additional staffing and setup of the system	\$ -	\$84,552	\$84,552	\$84,552
<b>Total Government</b>		<b>\$1,366,646</b>	<b>\$1,498,161</b>	<b>\$2,134,839</b>	<b>\$1,696,281</b>

Cost impacts from the OFT have been provided for estimates dealing with:

- Communications and education strategy
- IT systems updates—licensing as well as compliance
- Business process updates, particularly licensing and compliance
- Industry Advisory Panel costs—operational implications
- Enforcement measures to ensure compliance
- Any additional FTEs—across each impacted OFT unit/team
- Shared Services Queensland (SSQ) scripting and other information channel updates.



## Methodology

This Consultation RIS and assessment considers the impacts of CPD and its effects on households, property agents, government, and the broader community.

In considering the base case for this analysis, the BAU case provides a realistic description of the status quo. The approach has been to:

- Address the problem identification statement—the primary issue is the problem of information in the market and how it is managed between the Principal (property owner) and the Agent.
- Review the real estate market in Queensland—sales, prices, and rentals.
- Consider studies on the possible cost of Principal/Agent problem and how it might affect the amounts that consumers receive from the sale and rental income.
- Analyse the complaints and the primary sources of issues consumers have identified—reviewed data on warning notices, compliance orders, infringement notices and court actions.
- Review interstate work on the issues—NSW, Tasmania and WA.
- Assess complaints data on a location basis.

The costs and benefits for the analysis are broken down into three groups: Property Agents, Government and Consumers. Tables 14, 15 and 16 run through the approach to the analysis.

*'...effects on households, property agents, government, and the broader community.'*





**TABLE 14:**  
**Estimation of impacts on property agents**

SPECIFIC ITEM	CALCULATION APPROACH AND ASSUMPTIONS
Continuing professional development (mandatory)	<ul style="list-style-type: none"> <li>• 1 session for Option 2</li> <li>• 6 points for Option 3(a)</li> <li>• 3 points for Option 3(b).</li> </ul> <p>These will be run by an RTO or the OFT. Assume higher costs as these will be accredited units. Cost of property services training package units between \$200 and \$500 (based on the Department's estimate only). Work on a lower range that amounts to \$250 per session/activity.</p>
Continuing professional development (electives)	<ul style="list-style-type: none"> <li>• 1 session for Option 2</li> <li>• 4 points for Option 3(a)</li> <li>• 2 points for Option 3(b).</li> </ul> <p>These will be run by the OFT, an RTO or by industry or government. Cost of property services training package units between \$200 and \$500 (based on the Department's estimate only). Analysis works on an upper range that amounts to \$400 per session/activity.</p>
Compliance—record keeping (4 hours per session/activity)	Assume 1 hour for Option 2, 1.5 hours for Option 3(b), and 2 hours for Option 3(a). Reflecting a combined market response and assessment in a public database.
Compliance—annual review	This is 1 hour of review for all options.
Training time (days)	Assume 4 hours per session/activity Option 2: 2 sessions (8 hours) Option 3(a): 4 activities = 10 CPD points (6 mandatory/4 elective points) (16 hours) Option 3(b): 2 activities = 5 CPD points (3 mandatory/2 elective points) (8 hours)
Staff cost per training (\$)	\$38 per hour and assume an 8-hour day. The figure for \$38/hr was calculated from the average weekly ordinary time earnings (AWOTE) data for the rental, hiring and real estate services for persons (\$1,539 in November 2020) divided by 40 hours worked.
Total cost per agent (\$ per year)	Staff cost per training + training time + number of sessions/points+ Compliance costs.
Number of agents	Updated OFT data on licences at the 30 June 2021.
REIQ members	REIQ website assuming that the current REIQ CPD exempts them from further training.
New agents	New agents will not be required to undertake CPD in their first year of work. In financial year 2020, there were 6,794 new licences (OFT data). Assume that 32% become REIQ members (current percentage of all agents to avoid double counting).
Other property agents associations	Other associations such as the Australian Property Institute etc. that may also provide training and individual decisions to undertake CPD. Plus individuals that undertake training in their own time.
Property agents requiring training	Number of property agents affected
Cost of CPD (course, compliance, staff)	Number of agents multiplied by total cost per agent
Property sales, leasing and management	In the 12 months to December 2020, in Queensland 63,316 houses, 23,218 units and townhouses and 14,189 land sold. Median prices were \$490,000, \$390,000 and \$224,000. Source: The REIQ Queensland Market Monitor March 2021 Issue 49.



SPECIFIC ITEM	CALCULATION APPROACH AND ASSUMPTIONS
Leasing Income (Queensland)	Total number of rentals, amount from rents, agents fee of 10%. 615,677 rentals in Queensland in 2020, average rent \$375 per week and 75% managed by agents. Number of rentals: Homes (314,572), Units (233,437) and Townhouse (64,332). Rental costs: Homes (\$395), Units (\$324) and Townhouses (\$398). Rental homes source: The REIQ Queensland Market Monitor March 2021 Issue 49.
Inefficient management	For sales a figure of 3% of the property sale value was used as a measure of consumer loss from actions of property agents. For rentals it was 10% of all rental income. The balance between sales and leasing complaints issues was split 19% for sales and 81% for rentals and this reflected an analysis of complaint data which identified the five largest sources of complaints which was 83% of all complaints were in these two areas.
Number of selling agents performing inefficiently	Taking the amounts for infringements, compliance and referred to court amounts for 1 year. Have looked at the complaints numbers and split them up between property management and sales. Only 19% of the amount of compliance activity deals with sales.  Note that actions from reform see a 25% reduction in Option 2, a 50% reduction in Option 3(a), a 35% reduction in Option 3(b).
Number of agents managing properties inefficiently	Taken the amounts for infringements, compliance and referred to court amounts for 1 year. Have looked at the complaints amounts and split them up between property management and sales. 81% of all compliance activity deals with property management.
Economic loss from sales agents performing inefficiently	Proportion of inefficient agents in above two rows. Use a study that suggested 3% of the property value as a measure of consumer loss from actions of property agents.
Economic loss from sales agents managing properties inefficiently	Proportion of inefficient agents above but used 10% of the rental income. There is a need to include the inefficiency and loss of consumer surplus arising from agents' actions.
Average real estate fee	Figure based on Industry standards and set at 2.5%.
Rental income	Figure based 7.5% commission.
Percentage of turnover forgone	Days in training as a percentage of a year.
Potential revenue forgone	Average real estate fees and rental income X turnover forgone.
Fines and charges	Average of reported charges for 2018–20. This was added to the BAU scenario and is decreased by 25% in Option 2, 50% in Option 3(a), and 35% in Option 3(b).
Cancellation and suspensions	In the OFT outcomes report—30 cancellations and 25 suspensions. Assume that cancellations will be constant as they seem to be mainly criminal actions. Note that actions from reform see a 25% reduction in Option 2, a 50% reduction in Option 3(a), a 35% and a reduction in Option 3(b).
Estimate of the impact of the complaints	Each of these proceedings indicates an adverse impact on a consumer. Each is then to be weighted by the costs being borne by the community from these actions being highlighted. Since 83% of complaints consist of just two areas. Split 81% management and 19% sale.





**TABLE 15:**  
**Estimation of impacts on government**

SPECIFIC ITEM	CALCULATION APPROACH AND ASSUMPTIONS
Percentage of agents checked	BAU to 5%; Option 2 is 10%, Option 3(a) is 25%, and Option 3(b) is 20%.
Agents compliance checking	Number of agents that will be checked.
Hourly rate (government staff)	\$45/hour based on an average annual cost of approximately \$75,000 per year (plus on-costs).
Hours per agent	Hours spent on each agent.
Total cost to government per annum	Number of agents X Hourly rate X Hours per agent.
Court, police and OFT time for courts	The average number of cases in the last three years (11 cases)—assumed that there were five days for each—two investigations, one brief and two in court time. Court cost is \$6,000 (used District court costs). Two days for property agents time, two days for the government, and two days for the affected parties time (average weekly earnings at \$25 per hour).
QCAT	Three cases per year for the base case. \$4,000 for admin costs and two days for property agents' time, two days for the government, and two days for the affected parties' time (average weekly earnings at \$25 per hour).
Payments for claims and receiverships	Average of payment for the last three years of payments from the trust fund. In NSW property agents are responsible for 25% of payments and this has been applied to the Queensland data. Reductions for Option 2—25%, Option 3(a)—50% and Option 3(b)—35%.
System Support and Development upgrade	Figures provided by the OFT assume that they are ongoing costs to the system. The costs encompass possible change to the MACS system, including multiple user interfaces (SSD is in transition and need to have both old and new systems running), new and/or amended online smartforms, the integration layer, changes to reporting and business intelligence and some testing.
Industry Licensing Unit	No inclusion of current base costs on the model.
Advisory panel	Room hire, incidentals such as photocopying, mail outs to attendees, refreshments etc.
Additional staffing	Industry Licensing and Registration (IL&R) envisages additional staff sought would handle all the administration side. Option 2 has an extra AO6 and AO4. Option 3(a) has an additional AO3. Extra staff to upload evidence of CPD compliance will need to be checked to ensure correct information being submitted.
Complaint unit	Option 2, 3(a) and 3(b) will likely have a noticeable impact on resources when managing complaints, consumer and industry inquiries, and possibly low-level investigations (depending on enforcement tools available in legislation). There is an expectation that any change will involve education programs for a few years, and each year will have PRIME obligations. Estimating a dollar value is difficult, but if needed, 0.2 of an AO4 FTE may be required, which is \$20k/annum.
CPD system	Option 2, 3(a) and 3(b) Program Strategy and Development (PSD) may be required to develop some policy, procedures, and guidelines for the OFT's various teams and possibly coordinate training. It is estimated that PSD would need an AO6 for 6 months for implementation plus say 0.2 of an AO6 FTE ongoing to monitor and review the scheme.



**TABLE 16:**  
**Estimation of impacts on consumers**

SPECIFIC ITEM	CALCULATION APPROACH AND ASSUMPTIONS
Number of complaints	Note that actions from reform see a 25% reduction in Option 2, a 50% reduction in Option 3(a), and a 35% reduction in Option 3(b).
Cost per complaint	This would include time lost in complaints, loss of income, the financial impact, and the impact of the operation of an inefficient market. We have used a range of \$1900 to \$4800 per complaint, which is averaged to \$3,350.





## Options Analysis

### What are the possible effects of the proposed requirements?

The following are various annual costs identified by the OFT and the compliance burden of the checking process on the current and proposed approaches in Options 2, 3(a) and 3(b). Table 17 below summarises the data used in the analysis.<sup>24</sup>

**TABLE 17:**  
Summary of data used in analysis

		ESTIMATED FIGURE			
PARTNER	COST	OPTION 1	OPTION 2	OPTION 3(a)	OPTION 3(b)
Property Agents	Cost of training—direct costs, lost time and productivity from staff away from work.	\$0	\$842	\$5,184	\$2,555
	Direct annual costs to property agents (estimate) <sup>25</sup>	\$0	\$200–\$500	\$800–\$2000	\$400–\$1000
	Total cost of CPD	\$0	\$19,546,188	\$120,341,376	\$59,311,770
	Inefficiency costs	\$39,735,186	\$29,801,390	\$19,867,593	\$25,827,871
	Fines and charges	\$172,651	\$129,489	\$86,326	\$112,223
Government	Compliance checking	\$104,643	\$209,286	\$1,046,430	\$418,572
	Time in court	\$151,008	\$113,256	\$75,504	\$98,155
	QCAT	\$13,728	\$10,296	\$6,864	\$8,923
	Payments for claims and receivership	\$1,097,267	\$822,950	\$548,633	\$713,223
	System upgrade	\$0	\$20,000	\$55,000	\$55,000
	Licensing—Panel	\$0	\$3,000	\$3,000	\$3,000
	Additional OFT staffing	\$0	\$319,373	\$399,407	\$399,407
Consumers	Cost of complaints	\$4,612,950	\$3,459,713	\$2,306,475	\$2,998,418
<b>TOTAL</b>		<b>\$45,887,733</b>	<b>\$59,204,868</b>	<b>\$168,586,250</b>	<b>\$101,871,384</b>

Source: Lytton Advisory estimates and analysis, 2021. Estimates of costs in first year for each option.

<sup>24</sup> This analysis uses data provided by OFT, estimates of training costs for agents and preliminary estimates of the impact of the Principal/Agent problem on Queensland consumers and the general community. These are year 1 cost estimates, which do not include escalation factors that discussed below.

<sup>25</sup> The direct costs are part of the overall costs.



The **base case** describes the regulatory position that would exist in the absence of the proposed CPD regulations. It is necessary to establish this position to consider the incremental costs and benefits of the viable options that address the identified problem. A more realistic reference case presented in this Consultation RIS compares options with the status quo (i.e. the proposed CPD options with the current regulations).

Regulatory costs to industry were calculated over a 10 year period of implementation and operation of the CPD scheme.

For the base case, the costs over the life of the regulations are estimated at around \$400,462,033 (PV).

For Option 2, the costs over the life of the regulations are estimated at around \$524,864,136 (PV).

For Option 3(a), the costs over the life of the regulations are estimated at around \$1,521,649,804 (PV).

For Option 3(b), the costs over the life of the regulations are estimated at around \$913,816,911 (PV).

## Benefit to cost comparison

None of the options presented can provide a positive benefit to cost ratio. The benefits from the introduction of CPD comprise reductions in consumer loss, reductions in fines and charges to property agents, and the reduction in inefficiency costs in sales and rental management. The costs include the increase in government costs, the revenue lost from property agents attending training and related compliance activities and the cost of CPD. For the 10 year period under assessment:

- Option 2 results in \$0.44 of benefits for each \$1 of costs incurred.
- Option 3(a) results in \$0.15 of benefits for every \$1 of costs incurred.
- Option 3(b) results in \$0.21 of benefits for every \$1 of costs incurred.

**TABLE 18:**  
**Benefits and Costs from the options relative to the BAU (2021–2031)**

	OPTION 2	OPTION 3(a)	OPTION 3(b)
Benefits	\$97,120,669	\$194,241,338	\$135,968,937
Costs	\$221,522,771	\$1,315,429,108	\$649,323,814
Benefit Cost Ratio	0.44	0.15	0.21

*Note: Expressed in present value terms, using a 7% real discount rate over a 10-year period.*

# 6. Consultation

## 2020 GEC—CPD RIS framework

In June 2021, consultation was undertaken with key industry stakeholders on the 2020 GEC on the development of a Consultation RIS.

The responses to this Consultation RIS will assist in refining the final regulation and informing government decision-making about the CPD framework and transitional arrangements for commencement should the recommended option go ahead.



# 7. Conclusion and recommended option

## Key outcomes from preceding sections

This Consultation RIS provides decision-makers with a foundation on which to formulate policy, and also to lay out to stakeholders the reasoning on the preferred option regarding assessing whether the introduction of mandatory CPD for property agents in Queensland is required. In doing so, the nature of the problem was decided and alternative policy options were identified along with an assessment of their costs and benefits. This with other relevant information is provided to assist with identifying the most suitable option.

## Identification of the problem

The attributes of the Queensland property market and the roles undertaken by property agents can create problems for consumers. Clear identification of these problems assisted assessment of the regulatory impact of specific options. It has been conceptualised by way of an analysis of the nature of the issues and estimates of their magnitudes, followed by the extent to which existing regulations address these problems.<sup>26</sup>

The current regulations are designed with a focus to ensure that property agents act in the best interest of their clients. Where they do not, this can be considered an example of, in economic terms, the principal-agent problem. That is, an agent may act in a way that is contrary to the best interests of the principal.<sup>27</sup>

To carefully focus on the nature of the problem, complaint data compiled by the OFT was analysed. In the five-year data set (2016–2021), almost 7,000 complaints were attributed to auctioneers, real estate agents, and resident letting agents. It is assumed that these complaints will grow by 1.7% per year (Queensland population growth rate)<sup>28</sup> after that period.

Complaints against real estate agents accounted for just under 93% of the total, with almost 7% of complaints against resident letting agents. The number of complaints relating to auctioneers was negligible.

Further analysis of complaint volumes relative to agents licensed in each category provided an insight into the different issues in various segments of the property services market. The main problem area is real estate agents, while the intensity of complaints is directed to resident letting agents. Five specific categories of complaints outcomes against real estate agents represented 88.7% of all complaints.

Having established the nature of the major problem within the industry and confirming it by examining the volume and profile of complaints, additional examination of the data demonstrates that the scale of the problem rests with the actions of real estate agents, as opposed to resident letting agents or auctioneers.

26 The focus is on the regulation of property agents but excludes issues specifically relating to residential tenancies which have already been the subject of a separate RIS. Department of Housing and Public Works (2019) A better renting future—Safety, security and certainty, Consultation RIS - Review of the *Residential Tenancies and Rooming Accommodation Act 2008*—Stage 1 Reforms, [https://qpc.blob.core.windows.net/wordpress/2019/11/RIQ-Consultation-RIS\\_FINAL.pdf](https://qpc.blob.core.windows.net/wordpress/2019/11/RIQ-Consultation-RIS_FINAL.pdf).

27 The two main categories of the principal-agent problem relating to property agents are moral hazard and adverse selection. With moral hazard, the result may be detrimental to the cost bearer—the real estate agent. With adverse selection, buyers and sellers possess different information. The one holding crucial information may act selectively to the detriment of the other party not having the same information.

28 Queensland population growth estimates drawn from Queensland Statistician's Office.



A further analysis examined the five-year (financial years 2016–2017 to 2020–2021) complaints history of property agents as provided by an updated data set from the OFT. This demonstrated that the three largest sources of complaints received for real estate agents, resident letting agents and auctioneers over the period 2016–17 to 2020–21 related to unsatisfactory performance/non-performance, misleading or deceptive conduct, and refunds.

The analysis demonstrated that the overwhelming majority of complaints against property agents arise from real estate agents. They are the source of four out of five complaints. Less than one in five complaints are against resident letting agents. Auctioneers account for fewer than one in thirty.

An additional element to the problem identification process was the responses from a survey of industry participants. The responses from this indicated that nearly 50% of respondents indicated that the main fair trading issue was ‘Misleading or deceptive conduct’; almost 29% thought ‘Trust account management’ was significant; and almost 21% said ‘Unlicensed traders’. Also considered important was ‘Appointments to act’ at almost 19%.

The nature of the problem based on the economic concept of the principal-agent problem and the complaints data from the OFT was examined in the context of market failure, regulatory failure, unacceptable hazard or risk to human health, safety, or the environment, and social/equity outcomes. Complementing this was the OFT complaints data and the industry survey results which gave direction to a market failure problem.

Regulation of property agents currently focuses on issues related to information asymmetry between sellers and property agents and landlords and property agents. This is enforced by the findings that 33% of the impact of complaints were addressed by Compliance Advice Letters, and nearly 50% of the survey responses indicated this was an issue in identifying misleading or deceptive conduct as a fair trading issue.

With almost 7,000 complaints against property agents in a five-year period—where complaints are being addressed regarding information differences between property agents and their clients—the prime problem this Consultation RIS addresses is a market failure arising from the principal-agent problem.

## Objectives of government action

The main objective of government action is considered to be a response to the problem within the property agent industry through further regulatory action (mandatory CPD) to provide support to all property agents to enhance public trust in the industry and protect consumers. That is, regulatory action must be efficient, effective, and in the public interest.

Any regulatory professional development should be such that it does not carry an undue cost or effort on property agents nor consumers. Furthermore, the CPD will, through quality, enhance the skill sets of operators, and provide them with a competency level that further enables a business to be conducted at the level expected by clients. This in turn will result in a lower number of disputes; lessen the risks posed by lesser trained property agents as well as lifting overtime, the public reputation of the industry.

There are a considerable number of risks that are relevant to the activities of property agents.

Some specific issues and risks are relevant to particular property market sectors, and these represent risks that also have the potential for consumer detriment. For example, property agents require an understanding of conveyancing practices and law, and can also be sought after to provide general investment advice. Further, selling rural properties or acting as a buyer’s agent all require specific knowledge and skill. However, for simplicity, this study assumes that the training undertaken is appropriate for the occupation category. For this reason, these areas should be considered as being covered as part of any minimum educational standard for auctioneers real estate agents, and resident letting agents.

Thus, the balance between the responsibility of each property agent and the role of government in providing the right environment for open business operations is an important discussion. However, the Problem Identification in this Consultation RIS did find that the current regulatory regime and approach by the OFT is appropriate and that the proposed changes do not reflect a failure of the government to protect consumers. Similarly, there were no specific social or equity concerns that were identified.



## Consideration of options

From the Problem Identification section, it was concluded that this Consultation RIS addresses a market failure arising from a principal-agent problem. Professional development is considered necessary to ensure that property agents have a set level of competency. The alternative is potential failure to minimise risk to consumers (particularly vulnerable ones), an increase in disputes, and reputational damage to the industry, all of which carry an economic cost.

Given the Queensland Government's best practice approach to regulation, each option is compared with the status quo. Following economic assessment of the options, a recommended option has been identified. Three options and a BAU case (or status quo), are considered in response and summarised in [Appendix 4](#).

## Impact analysis

The impact analysis in this Consultation RIS has been developed on the basis of available information on the potential costs and benefits of the options assessed. The underlying data that was used in these calculations is provided in [section 5](#) of this Consultation RIS.

The costs of Option 1, the status quo, are essentially the costs associated with the continuation of the current arrangements. Those included in Options 2, 3(a) and 3(b) are the various costs identified by the OFT and the compliance burden of the checking process on the current and proposed approaches.<sup>29</sup>

**TABLE 19:**  
**OFT total costs related to implementation**

GOVERNMENT	OPTION 1	OPTION 2	OPTION 3(a)	OPTION 3(b)
Percentage of agents checked	5%	10%	25%	20%
Total government	\$1,366,646	\$1,498,161	\$2,134,839	\$1,696,281

Source: Lytton Advisory 2021.

Cost impacts from the OFT have been provided for estimates dealing with:

- Communications and education strategy
- IT systems updates—licensing as well as compliance
- Business process updates, particularly licensing and compliance
- Industry Advisory Panel costs—operational implications
- Enforcement measures to ensure compliance
- Any additional FTEs—across each impacted OFT unit/team
- SSQ scripting and other information channel updates

<sup>29</sup> This analysis uses data provided by OFT, estimates of training costs for agents and preliminary estimates of the impact of the Principal/Agent problem on Queensland consumers and the general community.





## Summary of the costs of CPD

The benefits from introducing CPD comprise of: reductions in consumer loss, reductions in fines and charges to property agents, and the reduction in inefficiency costs in sales and rental management. However, the CBA demonstrated that none of the options considered provided a benefit to cost ratio greater than one.

The costs include some increases in government costs, revenue lost due to property agents attending training and related compliance activities, and introducing the cost of CPD to sections of the property agent that are not currently engaged in industry training. Table 20 contrasts the relative performance of each option with BAU.

## Recommendation

Preliminary estimates of the reduction in consumer detriment flowing from reductions in complaints associated with introducing annual CPD do not appear to offset increases in costs imposed on industry or the government.

The analysis highlights that significant incremental costs would be imposed if a heavy regulatory regime replaced the status quo. Costs to the economy of \$1.3 billion (Option 3(a)) or \$649.3 million (Option 3(b)) over a ten year period could be expected.

A lighter regulatory regime like the one proposed in Option 2 imposes significantly less cost. It secures almost three times as much economic benefit for the relative cost of the heaviest regulatory option (Option 3(a)).

**Option 2 is recommended** because it imposes both the least regulatory cost burden, and generates the largest benefit for cost imposed. It is important to note that over a ten year period this option will generate almost \$100 million of gross economic benefit.

**TABLE 20:**  
**Benefits and Costs from the Options relative to the BAU (2021–2031)**

	OPTION 2	OPTION 3(a)	OPTION 3(b)
Benefits	\$97,120,669	\$194,241,338	\$135,968,937
Costs	\$221,522,771	\$1,315,429,108	\$649,323,814
Benefit cost ratio	0.44	0.15	0.21

*Note: Expressed in present value terms, using a 7% real discount rate over a 10-year period.*

# 8. Consistency with fundamental legislative principles and human rights

## Fundamental legislative principles

The fundamental legislative principles under the *Legislative Standards Act 1992* (LS Act) were considered during the development of the three regulatory options. This section assesses the consistency of the proposed regulation with the fundamental legislative principles (FLPs) as defined by section 4 of the LS Act. These principles require legislation to have sufficient regard to the rights and liberties of individuals and the institution of Parliament.

It is considered the proposed regulatory options are broadly consistent with FLPs. However, potential issues are noted below.

### **Administrative powers sufficiently defined**

Under Option 2, the chief executive (or their delegate) will have the power to refuse renewal of the licence or registration upon expiry of the licence or certificate term, unless there are 'exceptional circumstances' for not completing the CPD requirements. It is proposed that 'exceptional circumstance' would not be defined in the legislation. This could potentially breach the principle that administrative powers should be sufficiently defined.

However, in this case, the absence of an 'exceptional circumstance' definition can be justified in the public interest, since 'exceptional circumstances' must be considered on a case by case basis. A prescriptive definition could inadvertently prevent a property agent from being able to claim 'exceptional circumstances', which would then result in renewal of the licence or registration being refused. Additionally, it should be noted the OFT will provide administrative guidance by reference to examples, to ensure property agent obligations are made clear and agents can comply with any new CPD requirements.

### **Appropriate delegation of power**

The introduction of a CPD scheme may give rise to FLP issues in relation to the appropriate delegation of power. It is proposed property agents would be required, on an annual basis, to complete CPD requirements that are approved by the chief executive.

Providing the chief executive with the power to approve the CPD requirements may contravene the principle that legislation has adequate regard to the institution of Parliament, by allowing the delegation of legislative power. However, it is considered delegation of legislative power in this circumstance is appropriate. It effectively operates as an extension of the existing delegation of legislative power in the PO Act in relation to training. Currently, the chief executive has the power to approve the mandatory training individuals must complete to be eligible for an initial licence or registration certificate. The proposed chief executive power in Options 2, 3(a) and 3(b) complements the current arrangements in relation to training and facilitates a pragmatic, flexible and responsive process for determining appropriate CPD sessions or points, given the dynamic and rapidly evolving training options available to industry in the market place.

FLPs will be considered in further detail for those proposals which are supported for implementation and during the drafting of any amendments.



## Human Rights

### Human Rights assessment

The introduction of legislation contemplated in the regulatory options is likely to have human rights implications. *The Human Rights Act 2019* (Human Rights Act), which received assent on 7 March 2019 and came into force in its entirety on 1 January 2020, protects 23 human rights in law.

Queensland Government departments are required to consider human rights implications in relation to any legislative proposals. While legislation may breach the principles of human rights, decisions must be proportionate in that it limits rights in the least restrictive way possible to achieve the objectives of the legislation.

Human rights matters have been considered as part of the development of options, including considering proposals around the modelling of the mandatory CPD schemes for property agents. Relevant human rights that may be engaged by the introduction of proposed legislation are as follows:

- Privacy and reputation (section 25 of the Human Rights Act)
- Fair hearing (section 31 of the Human Rights Act).

### Summary

Human rights considerations have been taken into account as part of developing the regulatory options which would result in the introduction of legislation to implement a mandatory CPD scheme for property agents.

Should introduction of a legislated CPD scheme for property agents be concluded as the appropriate response, consideration will be given to the design of the legislation to ensure human rights are complied with. This could encompass the inclusion of appropriate confidentiality provisions for the protection of personal information and appropriate review rights for non-compliance with the proposed legislation. The proposed legislation should be reasonable and proportionate in order to meet community expectations and outcomes. The issues outlined in relation to limiting the human rights mentioned would be addressed during drafting of the amendments and following feedback and consultation with impacted sectors.



# 9. Implementation, compliance support and evaluation strategy

If Option 2, 3(a) or 3(b) is to be implemented as the recommended option, it is proposed to allow a period of approximately 12 months from assent of any legislation, before these provisions commence. This period is intended to allow sufficient time for property agents and industry to understand the new CPD requirements and implement the necessary changes required for a smooth transition to the new CPD scheme. It would also allow the OFT to implement the necessary changes to operational practices and IT solutions needed to support the new scheme.

If a recommended option arising out of this consultation is progressed, implementation will occur having regard to ministerial and departmental priorities.

As Options 2, 3(a) and 3(b) seek to amend existing legislation, evaluation will occur within existing departmental evaluation processes.

Similarly, enforcement and compliance would be undertaken in accordance with existing enforcement and compliance policies.

*'...it is proposed to allow a period of approximately 12 months from assent of any legislation...'*



# Appendices

## Appendix 1: Interstate comparison—CPD

COMPARISON OF MANDATORY CONTINUING PROFESSIONAL DEVELOPMENT PROGRAMS FOR PROPERTY AGENTS IN AUSTRALIAN JURISDICTIONS

As at 10 December 2021, mandatory annual training and development exists in New South Wales, Western Australia, Tasmania and the Australian Capital Territory.

	NEW SOUTH WALES <sup>1</sup>	WESTERN AUSTRALIA <sup>2</sup>	TASMANIA	AUSTRALIAN CAPITAL TERRITORY
<b>Relevant legislation</b>	<u><i>Property and Stock Agents Act 2002 No 66</i></u>	<u><i>Real Estate and Business Agents Act 1978</i></u> <u><i>Real Estate and Business Agents (General) Regulations 1979</i></u>	<u><i>Property Agents and Land Transactions Act 2016</i></u>	<u><i>Agents Act 2003</i></u> <u><i>Agents Regulation 2003</i></u> <u><i>Agents (Continuing Professional Development) Guideline 2008 (No 1) for ACT</i></u>
<b>Continuing Professional Development (CPD) Training</b>	<u><i>Continuing Professional Development (CPD) requirements for NSW</i></u>	<u><i>Mandatory CPD-real estate for WA</i></u> <u><i>Elective CPD-real estate for WA</i></u> <u><i>Recent changes to CPD program from Jan 2021</i></u>	<u><i>Continuing Professional Development (CPD) with Property Agents Board for TAS</i></u>	<u><i>Agents Practice Manual for ACT</i></u>
<b>1 When mandatory CPD was introduced</b>	<ul style="list-style-type: none"> <li>• 1 September 2003.</li> <li>• 23 March 2020 (new requirements).</li> </ul>	<ul style="list-style-type: none"> <li>• 1 January 2007 (for licensees).</li> <li>• 1 January 2009 (for sales representatives).</li> </ul>	<ul style="list-style-type: none"> <li>• 1 January 2010 (Real estate agents, property managers, general auctioneers).</li> <li>• 1 April 2017 (for property representatives).</li> </ul>	<ul style="list-style-type: none"> <li>• 10 September 2004.</li> </ul>
<b>2 Who mandatory CPD applies to</b>	<ul style="list-style-type: none"> <li>• Real estate agents.</li> <li>• Stock and station agents.</li> <li>• Strata managing agents.</li> <li>• Assistant real estate agents.</li> <li>• Assistant stock and station agents.</li> <li>• Assistant strata managing agents. (Condition of licence or registration).</li> </ul>	<ul style="list-style-type: none"> <li>• Real estate agents.</li> <li>• Business agents.</li> <li>• Sales representatives (including property managers).</li> </ul>	<ul style="list-style-type: none"> <li>• Real estate agents.</li> <li>• Property managers.</li> <li>• General auctioneers.</li> <li>• Property representatives. (Condition of licence).</li> </ul>	<ul style="list-style-type: none"> <li>• Real estate agents (not agents with conditional licence to sell land via auction).</li> <li>• Real estate salespersons. (Condition of licence or registration).</li> </ul>

<sup>1</sup> Commenced in NSW on 23 March 2020.

<sup>2</sup> New penalty introduced in 2019: the requirements of CPD are prescribed by legislation and failure to comply may result in a penalty of up to \$5000.



	NEW SOUTH WALES <sup>1</sup>	WESTERN AUSTRALIA <sup>2</sup>	TASMANIA	AUSTRALIAN CAPITAL TERRITORY
<b>3 CPD points needed in prescribed timeframe</b>	<ul style="list-style-type: none"> <li>• CPD based on hours/units, not points system.</li> <li>• CPD activities depends on level/type of licence held. CPD activities include:               <ul style="list-style-type: none"> <li>◦ Compulsory topics—3 hours per year,</li> <li>◦ Elective topics—3 hours per year,</li> <li>◦ Business skills topics—3 hours per year.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• At least 10 points/12-month period.</li> <li>• 3 points from approved mandatory activities.</li> <li>• 7 or more points from approved elective activities.</li> </ul>	<ul style="list-style-type: none"> <li>• CPD requirements are different for different licence holders. E.g., 12 points by 30 June which consists of:               <ul style="list-style-type: none"> <li>◦ 8 points industry specific CPD;</li> <li>◦ 4 points (of industry specific CPD)—delivered by an external provider.</li> </ul> </li> <li>• Timeframe for completion depends on when in licence year licence is granted.</li> <li>• CPD conditions are designed to be completed by end of licence year (30 June).</li> </ul>	<ul style="list-style-type: none"> <li>• 12 CPD points/12-month period</li> </ul> Licence/registration periods: <ul style="list-style-type: none"> <li>◦ Agents—1 July to 30 June.</li> <li>◦ Salespeople—1 November to 31 October. (Condition of licence or registration).</li> </ul>
<b>4 Type of annual CPD cycle</b>	<ul style="list-style-type: none"> <li>• Annual cycle based on CPD year—23 March to 22 March.</li> </ul>	<ul style="list-style-type: none"> <li>• Annual cycle based on calendar year—1 January to 31 December. Licence/certificate term is triennial (3 years).</li> </ul>	<ul style="list-style-type: none"> <li>• Annual cycle based on licence year.</li> </ul>	<ul style="list-style-type: none"> <li>• Annual cycle based on licence year.</li> </ul>



NEW SOUTH WALES<sup>1</sup>

WESTERN AUSTRALIA<sup>2</sup>

TASMANIA

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**5 Time taken to complete CPD by participants**

- **Licences:**
  - Class 1 Agent—Real Estate or Strata Management—at least 9 hours CPD activity per year:
    - 3 hours compulsory
    - 3 hours electives
    - 3 hours business skill topics.
  - Class 1 Agent—Stock and Station—at least 6 hours CPD activity per year:
    - 3 hours compulsory
    - 3 hours business skills topics.
  - Class 2 Agent—Real Estate or Strata Management—at least 6 hours CPD activity per year:
    - 3 hours compulsory
    - 3 hours elective topics.
  - Class 2 Agent—Stock and Station—at least 3 hours CPD activity per year of compulsory topics. 3 hours compulsory.
- **Registration certificate**
  - Assistant Agent—Real Estate—at least 3 units CPD activity per year from a valid Certificate IV qualification.
  - Assistant Agent—Strata Management—at least 3 units CPD activity per year from a valid Certificate IV qualification.
  - Assistant Agent—Stock and Station—at least 3 units CPD activity per year from a valid Certificate IV qualification.
  - Assistant Stock and Station Agents (Livestock only condition)—No CPD requirements.

- CPD points assigned to each approved CPD activity at differing rates per hour, depending on training type and provider.
- Mandatory prescribed subjects allocated a total of 3 hours.
- Elective activities attract points at different rates; outlined in Regulator’s approved elective activities list.
- If late to mandatory training session by 30 minutes or more will not be eligible to claim CPD points.

- CPD condition on licence will identify timeframe in which licence holder has to complete CPD requirement.
- Points allocated for specific CPD activities; information on List of *Approved CPD Activities* (regularly updated and published on Regulator’s website).
- Hours allocated or approved will not necessarily reflect hours of attendance at activity.
- Only hours spent on actual activity may count towards CPD activity (not travel, meal/ other breaks, networking functions).
- Regulator assesses activity according to desired outcomes.

- **Category 1**—calculated at half point per hour of activity; maximum two points can be claimed.
- **Category 2**—calculated at rate of one point per hour.
- **Category 3**—calculated at rate of eight points per unit of competency.

**6 Mandatory CPD activities prescribed by Regulator**

- Compulsory topics—3 hours per year for individual holders of class 1 or class 2 licence (1 hour per CPD topic).
- Compulsory learning topics: determined annually by Regulator; can only be delivered by industry association, government agency or entity approved by Regulator; will change each CPD year.

- Mandatory activities per year relevant to licence or registration to obtain 3 mandatory points (online delivery available).
- Delivered by 4 approved training providers listed on Regulator’s website and paid for by Regulator (if completed within CPD annual cycle).

- From time to time all property agents may be required to undertake a CPD activity on a specific topic/issue for an allocated number of points.
- Regulator will specify training and when to be completed.

- Not contemplated, although one must be from category three.



	NEW SOUTH WALES <sup>1</sup>	WESTERN AUSTRALIA <sup>2</sup>	TASMANIA	AUSTRALIAN CAPITAL TERRITORY
<b>7 Overview of CPD requirements</b>	<ul style="list-style-type: none"> <li>• <b>Compulsory topics (3 hours per year):</b> topics determined by Regulator with industry and delivered by approved providers. Compulsory topics will change each CPD year.</li> <li>• <b>Electives (3 hours per year):</b> may be delivered by any training provider (does not need to be approved by Regulator).</li> <li>• <b>Business skills (3 hours per year):</b> may be delivered by any training provider (does not need to be approved by Regulator).</li> </ul>	<ul style="list-style-type: none"> <li>• Only activities approved by Regulator attract CPD points.</li> <li>• <b>Mandatory CPD activities</b>—3 mandatory subjects required per year.</li> <li>• Funding provided for attendance at mandatory activities listed on Regulator’s website.</li> <li>• <b>Elective CPD activities</b> make up balance of 10 CPD points which are topics with specific relevance or interest for agent or business.</li> <li>• CPD elective activities include training courses, seminars, lectures, workshops, online courses, and distance educational activities. Cost borne by participant.</li> <li>• Elective CPD activity falls into one of 4 learning categories which indicate nature of activity. Categorisation dependent on type of training, who is providing training, and number of CPD points that can be accrued per hour of an activity.</li> <li>• Learning category 4 is ‘in-house’ and similar training. Metropolitan and regional property agents: only permitted 3 elective points from Learning Category 4 activities to be counted towards 7 points necessary to be compliant.</li> <li>• Remote property agents: allowed to claim 6 elective points per year from Learning Category 4 activities.</li> </ul>	<ul style="list-style-type: none"> <li>• The Regulator imposes CPD condition() on all individual property agent licences.</li> <li>• CPD requirements are different for different licence holders.</li> <li>• Includes training courses, workshops or symposiums, distance professional developmental/education programs; multimedia or website-based programs; conferences or seminars including webinars; other training types as approved by Regulator.</li> <li>• Must have relevance to property industry, significant intellectual or practical content and professional development outcome.</li> <li>• Must be approved by Regulator to count towards CPD.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>3 categories of learning</b>—any combination of at least two categories, one must be category 3.</li> <li>• <b>Category 1:</b> self-paced activity with educational, stated learning outcome, relate to work activities (i.e. attending seminars, watching videos, on the job learning not associated with routine functions).</li> <li>• <b>Category 2:</b> no formal assessment but delivered interactively (i.e. participation/input in workshops, forums, web-based tools/CDs; workshops, delivered by lawyers, accountants, auditors, valuers or other relevant experts.</li> <li>• <b>Category 3:</b> units of competency requiring formal assessment; assessed as competent by RTO; one or more units of competency, contributing to recognised qualification or learning pathway relevant to property industry.</li> </ul>
<b>8 CPD points claimed retrospectively or carried over</b>	<ul style="list-style-type: none"> <li>• It is not possible to ‘carry over’ extra points to next CPD period.</li> <li>• Carry-over arrangement only available during first year of new licensing system.</li> </ul>	<ul style="list-style-type: none"> <li>• It is not possible to ‘carry over’ extra points to next CPD period.</li> </ul>	<ul style="list-style-type: none"> <li>• It is not possible to ‘carry over’ extra points to next CPD period.</li> <li>• Regulator’s discretion whether to approve courses retrospectively.</li> </ul>	<ul style="list-style-type: none"> <li>• Yes. If exceed 12 CPD points in a year, extra points may be carried over to next period.</li> <li>• Maximum of 11 points can be carried forward and at least part of CPD completed in subsequent year must be Category 3.</li> </ul>



**NEW SOUTH WALES<sup>1</sup>****WESTERN AUSTRALIA<sup>2</sup>****TASMANIA****AUSTRALIAN CAPITAL TERRITORY****9 Special conditions associated with collecting points**

- None specified, however CPD activities will depend on the level and type of licence held.

- Individual licensed agent: must attend mandatory CPD activity for licensed agents.
- Property managers: must attend mandatory CPD activity for property managers.
- Sales representatives: may elect to attend mandatory CPD activity for sales representatives or property managers.
- Funding only provided for attendance at mandatory activities listed on Regulator website, and relevant to participant's licence/registration.
- Licensed agents, sales representatives and property managers will only be funded to attend a mandatory session once per calendar year.

- Condition on licence will indicate property agent must undertake minimum number of CPD points within period specified.
- Condition will indicate how many industry specific CPD points must be undertaken, and of those, the minimum number of CPD points that must be provided by an external provider.

- First time licensee or registrant—CPD requirements at renewal varies according to when training is undertaken or applying under mutual recognition.
- During licensing/registration period: do not need to undertake CPD for first year of licence or registration if qualifications were obtained in that year's licence or registration period.
- Prior to licensing/registration period: complete 1 CPD point for each month beginning the month after initially licensed.
- Mutual recognition: complete 1 CPD point per month until renewal date.
- CPD must be based on ACT law not possible to achieve Category 3 points while concurrently satisfying another jurisdiction's CPD requirements.
- Statements of attainment must indicate training relevant to ACT law or it cannot be accepted.

**10 CPD exemptions or extensions**

- No exemptions granted to individuals who fail to complete the required CPD within the allocated period.
- Automatic exemption—if licence or registration certificate commences within 90 days before expiry of allocated CPD period.
- If registration certificate commences within 3 to 9 months of expiry of CPD period, holder required to complete minimum 1 CPD unit from that year from valid Certificate IV qualification (Class 2 Agent licence).

- Yes, licensee/sales representatives may apply to the Regulator in writing for total or partial exemption from annual CPD requirements (for calendar year applied for).
- Regulator will determine whether appropriate to grant exemption and cannot grant exemption for previous calendar year CPD requirements.
- Registrants/licensees/triennial certificate licensees: not required to undertake CPD in calendar year registration/licence first granted between 1 Oct-31 Dec. If registration/licence first granted between 1 Jan-30 Sept, required to obtain 10 CPD points for year.

- Yes, can apply in writing to Regulator to be excluded from part or all CPD points or request extension of time.
- As a general principle, financial hardship, workload, age or remote location are not adequate grounds for an exemption.
- May need supporting documentation.
- Each case is considered on its merits.

- Yes, if unable to complete CPD in period—Regulator may waive requirement to complete some or all CPD for that year if extenuating circumstances exist. E.g. serious illness or misadventure.
- Not extenuating circumstances—unaware of CPD requirements or delays in booking training package.



## NEW SOUTH WALES<sup>1</sup>

## WESTERN AUSTRALIA<sup>2</sup>

## TASMANIA

## AUSTRALIAN CAPITAL TERRITORY

### 11 How mandatory CPD courses are determined

- Compulsory learning topics: determined annually by Regulator in consultation with the Real Estate Reference Group (RERG). The topics address compliance and consumer protection matters identified by the Regulator and industry associations.
- RERG, CPD sub-committee develops a course outline for each compulsory topic.
- Elective and business skill topics may be delivered by any training provider (who does not need to be approved by the Regulator), provided the provider delivers training in the topic areas listed by the Regulator.

- Regulator determines mandatory activities based on recent legislative changes, emerging issues, identified risks, etc. prior to commencement of each calendar year.
- Elective courses submitted for consideration: assessed according to principles above and on case-by-case basis as mandated – courses focused on increasing knowledge of:
  - relevant legislation
  - avoiding, minimising and/or managing risk (e.g. fraud, employee dishonesty, audit qualifications)
  - industry best practice (e.g. trust accounting; identity verification, conflict of interests)
  - complaint resolution
  - business environments.

- CPD activity approval: Regulator assesses whether activity is relevant to property industry, has significant intellectual or practical content, and professional development outcome.
- A CPD activity must be approved by the Regulator before attendance will attract CPD points.

Through 3 learning categories. Once the CPD categories are set they generally do not change.

- Category 1: self-paced activity with educational, stated learning outcome
- Category 2: no formal assessment but delivered interactively
- Category 3: units of competency requiring formal assessment.

### 12 Evidentiary or record keeping obligations (property agents or training providers)

- Property agents must retain own records of any compulsory, elective, or business skill topics completed.
- **Registration holders:** must retain statement of attainment issued by RTO for each unit completed from relevant Certificate IV for area of practice.
- **Licence holders:** (class 1 and class 2): must retain all records for 3 years and registration holders for 4 years.
- **Licence and Registration Certificate holders:** required to provide evidence to Regulator on completion of required CPD topics.
- **Approved providers:** must retain following records for 4 years:
  - Participants register
  - Record of completion.

- **Training providers:**
  - must notify Regulator with attendance details (via on-line electronic lodgment facility) within 14 days of approved CPD course conducted
  - must issue participants with evidence of attendance on completion of a CPD activity or of an assessment being undertaken and passed.
- **Property agents:**
  - must retain records of mandatory and elective CPD activities (statement of attainment, record of completion, certificate of attendance, e.g., seminar receipts, notes on approved videos, DVDs or multimedia programs)
  - can maintain CPD Training Log listing details of each CPD activity completed
  - retain records/supporting documents for 4 years.

- CPD activities must be noted on CPD declaration form.
- Property agents need to retain proof of attendance at CPD activities for at least 2 years.
- At renewal, CPD activities must be noted on a CPD declaration form detailing approved activities completed.

- **Property agents** must keep a CPD training log listing details of each CPD activity completed.
- If all CPD completed in year is Category 3—a statement of attainment, qualification or certificate from RTO is sufficient; must be kept for at least 3 years.
- **Training providers:** must issue statements of attainment indicating training is relevant to ACT law to be acceptable.
- Evidence of completion of CPD to be kept for at least 3 years.



	NEW SOUTH WALES <sup>1</sup>	WESTERN AUSTRALIA <sup>2</sup>	TASMANIA	AUSTRALIAN CAPITAL TERRITORY
<b>13 Consequences for non-compliance</b>	<ul style="list-style-type: none"> <li>• May result in suspension or cancellation of licence or registration.</li> </ul>	<ul style="list-style-type: none"> <li>• May result in issue of infringement notice or disciplinary action.</li> <li>• Could result in cancellation, suspension, refusal of licence or registration renewal.</li> <li>• If required points not obtained by 31 December, activities/outstanding points need to be completed as soon as possible, including CPD points for current CPD cycle.</li> </ul>	<ul style="list-style-type: none"> <li>• May result in refusal to renew or place further conditions on licence or registration.</li> </ul>	<ul style="list-style-type: none"> <li>• If proof of completion of CPD is not provided when requested by the Regulator, licence or registration will be cancelled.</li> </ul>
<b>14 Government's role in ensuring compliance</b>	<ul style="list-style-type: none"> <li>• Licence and certificate holders required to provide evidence to Regulator they have completed required CPD topics.</li> </ul>	<ul style="list-style-type: none"> <li>• Regulator will check CPD points for previous CPD cycle. These checks will occur at start of each new calendar year.</li> <li>• Approved RTO conducting CPD activity will provide Regulator with details of CPD points.</li> </ul>	<ul style="list-style-type: none"> <li>• Compliance is enforced at the time of renewal with evidence of compliance with CPD required.</li> <li>• If audited, must produce any or all of the following: <ul style="list-style-type: none"> <li>◦ evidence of records of attendance, statement of attainment, certificates or record of completion; transcripts of results; copies of training activity handouts or materials provided; any other evidence to demonstrate attendance and participation in training activity.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Statement required to Regulator that CPD requirement complied with.</li> <li>• Regulator will periodically request proof of completion of CPD and if not provided licence or registration will be cancelled.</li> <li>• CPD log book information must be produced to Regulator within 28 days of request.</li> <li>• Regular audits of CPD for compliance with legislation undertaken.</li> </ul>
<b>15 Regulator considers who may deliver CPD training</b>	<p>Yes.</p> <ul style="list-style-type: none"> <li>• Only approved providers may deliver compulsory learning topics.</li> <li>• Approved providers must comply with conditions of approval.</li> <li>• List of approved providers available on Regulator's website shows topics organisations have nominated to deliver (CPD year 23 March to 22 March).</li> <li>• Elective topics—may be delivered by any training provider. Provider does not need to be approved by Regulator.</li> </ul>	<p>Yes.</p> <ul style="list-style-type: none"> <li>• Only training providers approved by Regulator may deliver mandatory training component each year.</li> <li>• Elective component—training providers must seek approval by submitting details of each activity for assessment to Regulator.</li> </ul>	<p>Yes.</p> <ul style="list-style-type: none"> <li>• Regulator publishes up-to-date list of approved CPD activities on its website.</li> <li>• Only approved activities listed on Regulator's website can attract CPD points.</li> <li>• Approved activity listed online are published with these details - unique CPD code, activity name, training provider, classification and number of CPD points.</li> </ul>	<p>No.</p> <ul style="list-style-type: none"> <li>• However, learning activities for Category 3 must be conducted by an RTO accredited to conduct training.</li> </ul>



	NEW SOUTH WALES <sup>1</sup>	WESTERN AUSTRALIA <sup>2</sup>	TASMANIA	AUSTRALIAN CAPITAL TERRITORY
<b>16 Where recognised CPD courses offered</b>	<ul style="list-style-type: none"> <li>A list of approved providers who may deliver compulsory learning topics is listed on Regulator’s website.</li> </ul>	<ul style="list-style-type: none"> <li>Mandatory activities are delivered by four registered training organisations approved by Regulator.</li> </ul>	<ul style="list-style-type: none"> <li>CPD activities are Regulator approved and delivered by registered training providers referred to in list of approved CPD activities/register.</li> </ul>	<ul style="list-style-type: none"> <li>Regulator does not impose requirements on or approve training providers (except must have required Commonwealth and ACT accreditation requirements under the Australian Quality Training Framework).</li> </ul>
<b>17 Link to further information on Regulator website</b>	<p><a href="#"><u>Continuing Professional Development (CPD) requirements for NSW FT</u></a></p>	<p><a href="#"><u>Compulsory professional development (CPD) - real estate for WA DMIRS</u></a></p> <p><a href="#"><u>FAQ’s CPD points and activities - real estate</u></a></p>	<p><a href="#"><u>Property Agents Board of Tasmania - CPD Questions</u></a></p> <p><a href="#"><u>Consumer, Building and Occupational Services - Real Estate Agents for TAS</u></a></p>	<p><a href="#"><u>Agents Practice Manual for ACT</u></a></p> <p><a href="#"><u>Real estate, business &amp; stock and station agent and salesperson continuing professional development for ACT</u></a></p>
<b>18 Links to training providers</b>	<p><a href="#"><u>Approved providers for delivery of compulsory CPD topics for NSW</u></a></p> <p><a href="#"><u>REINSW - Continuing Professional Development Compulsory and Elective CPD Courses for NSW</u></a></p>	<p><a href="#"><u>Mandatory CPD - real estate - Training providers for WA</u></a></p>	<p><a href="#"><u>List of approved CPD activities - real estate - Training providers for TAS</u></a></p> <p><a href="#"><u>REIT - Real Institute of Tasmania</u></a></p>	<p><a href="#"><u>REIACT - Professional Development Training for the ACT and NSW Compulsory and Elective CPD</u></a></p>
<b>19 Formal evaluation of program</b>	<ul style="list-style-type: none"> <li>January 2006—resulted in changes to CPD scheme.</li> <li>2008—resulted in further changes to CPD scheme.</li> </ul>	<ul style="list-style-type: none"> <li>No</li> </ul>	<ul style="list-style-type: none"> <li>Mid-2015—resulted in changes to application of CPD scheme.</li> </ul>	<ul style="list-style-type: none"> <li>No</li> </ul>



## Appendix 2: Technical discussion of the Principal-Agent Problem (Lytton Advisory)

### The principal-agent problem

The principal-agent problem in economics is also known as the agency dilemma or the agency problem. It occurs when one person or entity (the “agent”) can make decisions and actions on behalf of or impact another person or entity: the “principal”.

This dilemma exists when an agent acts in their own best interests, contrary to the interests of their principal. In the real estate industry, this manifests where individuals in property occupations act as brokers (agents) and intermediate the operation of markets (buyers and sellers, principals).

Consider a real estate vendor (the principal) wondering whether their real estate agent (the agent) recommends extended marketing activities because it is essential for the vendor’s well-being or to generate more income for the real estate agent. The problem arises in almost any context where the agent has a small or non-existent share in the outcome, such as in a negotiated deal where a commission is paid on the value of property transacted or leased.

The principal-agent problem typically arises when the two parties have different interests and asymmetric information (the agent having more information). The principal cannot directly ensure that the agent always acts in their (the principal’s) best interest. This is mainly where valuable activities to the principal are costly to the agent and where elements of what the agent does are expensive for the principal to observe.

Agents are often better informed than the clients who hire them and may exploit this informational advantage. Real estate agents have an incentive to convince clients to sell their houses too cheaply and too quickly.<sup>30</sup>

Often, the principal may be sufficiently concerned at the possibility of being exploited by the agent that they choose not to enter into the transaction at all when it would have been mutually beneficial: a suboptimal outcome that can lower welfare overall. The deviation from the principal’s interest by the agent is called “agency costs”.

There are two specific aspects of the principal-agent problem to consider in the provision of real estate services. One relates to moral hazard in transacting real estate between buyers and sellers and letting property between landlords and tenants. The other relates to adverse selection in the process of securing the real estate services to undertake these kinds of property transactions.

#### Moral hazard

A moral hazard occurs when a person or firm has an incentive to increase exposure to risk because it does not bear the total costs of that risk. For example, a real estate agency handling many property transactions does not necessarily have an incentive to maximise the sale price for a particular property if the effort can be transferred to another client to achieve a more significant or earlier sale.

Moral hazard in real estate markets can occur under a type of information asymmetry where the risk-taking party to a transaction knows more about its intentions than the party paying the consequences of the risk and has a tendency or incentive to take on too much risk from the perspective of the party with less information. For example, suppose a real estate agent has more undisclosed information about a buyer’s actions or intentions than the vendor. In that case, the real estate agent may have an incentive to act too riskily (from the viewpoint of the vendor) if the interests of both are not aligned.

<sup>30</sup> For example, Levitt and Syverson (2008) contrasted US home sales in which real estate agents were hired when an agent sells his or her own home. Consistent with the theory, they found homes owned by real estate agents sell for 3.7% more than other houses and stayed on the market 9.5 days longer, controlling for observables. Greater information asymmetry leads to larger distortions.



### Adverse selection

Adverse selection in markets for real estate services is when buyers (vendors and landlords) and sellers (real estate agents, resident letting agents and auctioneers) have different information. The result is that participants with crucial information might participate selectively in trades at the expense of other parties who do not have the same information.

In an ideal world, vendors and landlords should pay a price proportionate to their willingness to pay, and real estate agents, resident letting agents and auctioneers should sell at a price proportional to the quality of their goods and services. An inferior quality

product should be inexpensive, and a high-quality product should have a high price. However, when one party holds information that the other party does not have, they could make rational decisions to misbehave in the contract, inevitably causing the other party to suffer. Misbehaving can take many forms, like lying, hiding truths, or attempting to maximise self-utility.

This process of taking advantage of an economic contract or trade by possessing hidden information is known as adverse selection. In real estate service markets, these phenomena are addressed by regulations around pricing and professional standards.

The following table (Table 1 to Appendix 2) summarises the main distinctions between moral hazard and adverse selection.

**TABLE 1:**  
**Adverse Selection and Moral Hazard**

MAJOR DIFFERENCES BETWEEN ...	ADVERSE SELECTION	MORAL HAZARD
Asymmetric information regarding ...	... the type of individual	... the behaviour of an individual
That causes a bias ...	... before entering a contract	... after entering a contract

Source: Lytton Advisory

The market for rental properties provides a realistic scenario where both phenomena might occur. Adverse selection may occur in the decision-making process before renting a property. Some people who seek to rent might be uncommitted to regular upkeep of a house, ill-prepared to compensate for damages, or are just innately irresponsible. These types of renters might take advantage of asymmetric information between them and a landlord. A moral hazard may *arise* after a rental agreement is signed. Tenants have *less incentive* to care for the property than a property owner because it is not theirs.



## Appendix 3: Relationship to 2013 National RIS for real estate professions (Lytton Advisory)

The 2013 *Decision RIS—Proposal for national licensing of the property occupations* was examined to identify the relationship between the work undertaken at that time and the work for this Consultation RIS.

The 2013 Decision RIS examines replacing the current diverse state and territory licensing of property occupations with a national licensing system. It also looks at automatic mutual recognition. The impacts options would have on the industry, consumers and government were considered.

Although approaches vary widely, property occupations are licensed under state and territory legislation and administered by jurisdictional regulators. This means that there are up to eight different systems for setting licensing requirements around the country. The various approaches have led to different parameters, eligibility requirements and scopes of regulated work. As a result, different licence classifications, training requirements, licence periods and licence structures commonly apply. These inconsistencies impose costs on businesses operating in more than one jurisdiction.

Issues specifically relating to CPD were addressed as part of the proposed response. The Decision RIS noted that CPD aims to manage consumer risk by providing licensees, who have general competence, with the means to respond to changes in practice and legislation and updates to standards and codes. This will enrich their knowledge and skills, enabling them to adopt new work practices. Strategies that could be developed included information provision, development of guidelines or one-off training requirements. Ongoing CPD programs requiring, for example, a certain number of hours CPD per year were not considered as part of this approach. The response was aimed at achieving the desired outcome with the minimum level of burden.

The problem being addressed in this Consultation RIS relates to the operation of the market for real estate services in Queensland. This is a different emphasis to the harmonisation of property occupation standards between Australian jurisdictions.

## Appendix 4: Options for mandatory CPD for property agents

ELEMENTS	OPTION 1: STATUS QUO	OPTION 2: A LIGHT REGULATORY MODEL	OPTION 3: A HEAVY REGULATORY MODEL	
			OPTION 3(a)	OPTION 3(b)
<b>Legislative framework</b>	N/A – no requirements	<ul style="list-style-type: none"> <li>Amend PO Act to require property agents, on an annual basis, to complete CPD requirements approved by the chief executive, unless there are exceptional circumstances for not complying in that year.</li> <li>The term ‘exceptional circumstances’ is reflective of the high standard that needs to be met to be exempt from complying with the CPD requirements. The OFT will provide administrative guidance by reference to examples.</li> </ul>	<ul style="list-style-type: none"> <li>Amend the PO Act to create an annual points-based CPD framework with two elements:               <ul style="list-style-type: none"> <li><b>mandatory activities</b>, described in terms of required points approved by the chief executive and which can only be delivered by RTOs or OFT (where the chief executive may mandate all property agents must complete a specific OFT or RTO course in a particular year); and</li> <li><b>elective activities</b>, described in terms of required points approved by the chief executive.</li> </ul> </li> <li>Amend the PO Act to require property agents, on an annual basis, to complete CPD requirements approved by the chief executive, within the points system described above.</li> <li>It is intended this is a strict requirement and no legislative provisions for exceptions will be included. OFT will continue to offer administrative internal review processes, in addition to the proposed legislative amendments to offer external review to QCAT. In addition, OFT would consider exercising usual compliance discretion in relation to individual cases of non-compliance.</li> <li>Amend the PO act to create an annual CPD year, as examples only, linked with the financial year or a March - March year as used in NSW.</li> </ul>	<ul style="list-style-type: none"> <li>Same as Option 3(a)</li> </ul>





ELEMENTS	OPTION 1: STATUS QUO	OPTION 2: A LIGHT REGULATORY MODEL	OPTION 3: A HEAVY REGULATORY MODEL	
			OPTION 3(a)	OPTION 3(b)
<b>Complementary administrative framework</b>	N/A	<ul style="list-style-type: none"> <li>Property agents will be required to complete <b>two CPD sessions each year</b>:               <ul style="list-style-type: none"> <li><b>one session must be from the national property services training package</b> and</li> <li><b>one session must be from an annual chief executive approved list</b> which will be definitive for the sake of clarity for property agents.</li> </ul> </li> <li>OFT to chair an Advisory Panel which would be established administratively (no fees). It is expected the Advisory Panel would include the REIQ, the ARAMA, the ALPA and at least one RTO.</li> <li>Each year, the Advisory Panel will provide advice to the chief executive on acceptable CPD sessions. The Panel will be asked to nominate possible CPD session that relate to one or more of four topic areas:               <ul style="list-style-type: none"> <li>Sound Financial Management;</li> <li>Relationship Management;</li> <li>Emerging Industry Trends; and</li> <li>Legislative Requirements.</li> </ul> </li> <li>There is scope each year for a particular session to be mandated. For example sessions relating to important issues such as family and domestic violence awareness and training, particularly in a rental setting.</li> <li>New property agents will be exempt from CPD requirements for the first 12 months from their licence or certificate being issued on the basis that they have recently completed the initial training requirements necessary to obtain the relevant licence or certificate.</li> </ul>	<ul style="list-style-type: none"> <li>Property agents would be required to complete <b>10 CPD points annually</b>:               <ul style="list-style-type: none"> <li><b>6 points from mandatory activities</b>; and</li> <li><b>4 points from elective activities</b>.</li> </ul> </li> <li>Points will be allocated for specific CPD activities by the OFT only in accordance with the following:               <ul style="list-style-type: none"> <li><b>3 points</b> for any RTO delivered competency from the Property Services Training Package and can be used for both mandatory and elective activities;</li> <li><b>3 points</b> for any OFT information or training session and can be used for both mandatory and elective activities;</li> <li><b>2 points</b> for RTO delivered activity outside of the Property Services Training Package but relevant to the property industry and can be used for both mandatory and elective activities; and</li> <li><b>2 points</b> for an industry-run or government-run information or training session and can be used for elective activities only.</li> </ul> </li> <li>There will be no provision for carry-over of CPD from one year to next.</li> <li>List of Approved CPD Activities to be published on OFT website and regularly updated. This list will include advice on acceptable completion paperwork.</li> <li>OFT to chair an Advisory Panel which would be established administratively (no fees) to give flexibility while still ensuring crucial industry input. It was expected the Advisory Panel would include the REIQ, the ARAMA, the ALPA and at least one RTO.</li> <li>Each year, the Advisory Panel will provide advice to the chief executive on acceptable CPD activities in both categories: mandatory and elective activities.</li> <li>There is scope each year for a particular activity to be mandated, for example activities relating to important issues such as family and domestic violence awareness and training, particularly in a rental setting.</li> <li>New property agents will be exempt from CPD requirements for the first 12 months from their licence or certificate being issued on the basis that they have recently completed the initial training requirements necessary to obtain the relevant licence or certificate.</li> </ul>	<ul style="list-style-type: none"> <li>Mostly the same as Option 3(a) with 2 key differences as below.</li> </ul> <p><i>1st difference</i></p> <ul style="list-style-type: none"> <li>Property agents would be required to complete <b>5 CPD points annually</b>:               <ul style="list-style-type: none"> <li><b>3 points from mandatory activities</b>; and</li> <li><b>2 points from elective activities</b>.</li> </ul> </li> </ul> <p><b>Note – points allocation arrangements same as 3(a)</b></p> <p><i>2nd difference</i></p> <ul style="list-style-type: none"> <li>Each year, in addition to the Advisory Panel advice on acceptable CPD activities, OFT to assess property agents complaints data which will then shape advice to the chief executive on matters that could be addressed in the CPD sessions for the coming year.</li> </ul>



ELEMENTS	OPTION 1: STATUS QUO	OPTION 2: A LIGHT REGULATORY MODEL	OPTION 3: A HEAVY REGULATORY MODEL	
			OPTION 3(a)	OPTION 3(b)
<b>Impact of non-compliance</b>	<ul style="list-style-type: none"> <li>N/A</li> </ul>	<ul style="list-style-type: none"> <li>There will be an immediate impact on the ability of a property agent to renew their licence or certificate.               <ul style="list-style-type: none"> <li>When an agent is renewing their licence/certificate, the agent must make a declaration on whether they have completed the CPD annual requirements for each year of their licence (1 or 3 years).</li> <li>if the agent indicates they have not completed the CPD annual requirements, that agent will be requested to explain any exceptional circumstances.</li> </ul> </li> <li>If the OFT determines there are no exceptional circumstances, the chief executive will have the power to refuse renewal of the licence or registration certificate upon expiry of the licence or certificate term.</li> </ul>	<ul style="list-style-type: none"> <li>Non-compliance with annual CPD requirements for two years or more is a ground for suspension of a licence/certificate.</li> <li>There will be mandatory obligations on property agents to submit proof of completion of annual CPD requirements within three months of the end of each annual CPD year.</li> </ul>	<ul style="list-style-type: none"> <li>Same as Option 3(a)</li> </ul>
<b>Review rights</b>	<ul style="list-style-type: none"> <li>N/A</li> </ul>	<ul style="list-style-type: none"> <li>Property agents will be able to seek an administrative internal review of a decision to refuse renewal of the licence/certificate (in line with existing OFT administrative arrangements in respect of a decision to refuse a licence/certificate for a different reason).</li> <li>This internal review process would be available to property agents prior to an agent's right to seek external review at the QCAT in respect of the decision to refuse renewal of the licence/certificate.</li> <li>The licence/certificate would remain active/operational while the property agent is seeking internal and/or external review.</li> </ul>	<ul style="list-style-type: none"> <li>Property agents will be able to seek an administrative internal review of a decision to suspend a licence/certificate (in line with existing OFT administrative arrangements in respect of a decision to suspend a licence/certificate for a different reason).</li> <li>This internal review process would be available to property agents prior to an agent's right to seek external review at the QCAT in respect of the decision to suspend the licence/certificate.</li> <li>The licence/certificate would remain active/operational while the property agent is seeking internal and/or external review.</li> </ul>	<ul style="list-style-type: none"> <li>Same as Option 3(a)</li> </ul>
<b>Spot checks/ power to request information or documents</b>	<ul style="list-style-type: none"> <li>N/A</li> </ul>	<ul style="list-style-type: none"> <li>OFT will be authorised to undertake spot checks of agents who have made the declaration that they have completed the annual CPD requirements and to require production of relevant documents and information.</li> <li>Section 220 of the PO Act currently prohibits a person from knowingly making a false or misleading statement to an official and a breach could be grounds to immediately suspend the licence. This would apply if the spot check revealed that the agent had knowingly not completed their annual CPD requirements and then made a positive declaration on the renewal form.</li> </ul>	<ul style="list-style-type: none"> <li>OFT will be authorised to require further production of relevant documents and information in relation to completion of annual CPD requirements.</li> </ul>	<ul style="list-style-type: none"> <li>Same as Option 3(a)</li> </ul>



## Appendix 5: Initial Competition Assessment (Lytton Advisory)

Governments, including the Queensland Government, are obliged to operate within boundaries, and competition policy is one of these boundaries.

A competition policy view, in simple terms, proposes that minimum education standards are those that are needed to protect the public interest. This, in turn, is determined by defining the risk to the public that arises from inappropriate conduct. Thus, mandatory training can be supported where the benefit of reducing the risks to the public outweigh the costs to business.

An alternate view, presented by stakeholders, is that minimum education standards are those that will create a professional industry. This is primarily driven by the premise that the higher the educational standard, the greater the level of professionalism. Similarly, there is a view that the public will have more confidence in a person with higher than lower qualifications.

Higher education standards may be a component of professionalism, particularly where imposed by an industry as a condition of membership. However, if it is accepted that more education is desirable, how much education would be needed? Further, as higher education standards impose costs on individuals and businesses, it becomes more difficult to argue that the benefits outweigh the costs, particularly where the additional education does not address a specific risk. Finally, higher education as a mandatory requirement also creates significant barriers to market entry. Lytton Advisory considers that such a discussion is beyond the boundaries of this study.



## Appendix 6: Experience in Other Jurisdictions (Lytton Advisory)

The REIQ examined the performance of other jurisdictions in implementing CPD programs (REIQ, 2020).<sup>31</sup> That analysis found that in WA, in the five years leading up to and including 2009, the average number of written concerns received by the Real Estate Institute of Western Australia (REIWA) was 143 per annum. However, in 2010, following the implementation of compulsory CPD, the number of written concerns fell by 70% to 58 written complaints. Moreover, the average for the first three years to 2012 was 55 complaints, constituting a reduction in written complaints of 61%<sup>32</sup>

In NSW, the introduction of a comprehensive CPD program produced a similar trend. According to information provided by the NSW OFT, in 2017–18, there were 58,541 licensed property agents. In 2016, CPD was introduced for all licensed property agents, with the requirement of 10 hours per year of CPD was required, with an annual check being made when agents renew their licences. Over the three years from 2015–16 to 2017–18, the number of complaints has fallen from 7,327 to 4,173 (in 2016–17) and a further fall to 4,018 in 2017–18. Taking a three-year average, NSW has more complaints in absolute numbers than the sector in Queensland. The most common complaints are Tenancy, Property Sale, Property Management, Community/strata, and Residential land lease. The NSW OFT also operates a compensation fund for a loss suffered due to the actions of a licensed property agent. In the last three years, the payments made from the compensation fund also decreased. In 2015–16 the payments were \$2,359,202 which then fell to \$541,249 in 2016–17 but rose to \$664,316 in 2017–18.

The recorded decrease in complaints in NSW has been around 43% over the three years identified. This might require reconsidering the current assumptions of decreases in complaints by 25% for Option 2 and 50% for Option 3(a) and 35% for Option 3(b). A conservative estimate of complaint reduction associated with implementing a mandatory CPD program would be in the order of 40% or some similar statement. They still appear to be reasonable assumptions considering the changes in WA. It is suggested that sensitivity analysis includes a lower set of outcomes in reduced complaints.

In Tasmania, the introduction of CPD has not seen a noticeable change in complaints. In 2014–15, the year prior to the changes there were 47 complaints. This increased to 61 complaints in 2015–16 and then fell to 45 in 2016–17. In 2017–18, Complaints rose to 67 (but there were several matters carried over from the previous year) and then fell to 53 complaints in 2018–19. The fluctuations in the number of complaints makes it difficult to see a particular trend or change in behaviour from the introduction of CPD.

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31 Drawn from analysis on the REIQ website accessed April 2021.

32 We cannot report on complaints received in recent year as there is no additional data available from the REIWA website.



## Appendix 7: Regional Analysis (Lytton Advisory)

The following section undertakes a review of complaints by the location of the complainant. The data was drawn from complaints made by locality, that includes interstate and those that did not state a location. The locations reflected in Tables 1 and 2 to Appendix 7 represent a population of 95% of the Queensland population (2016 Census results). Overall, the trend in complaints has seen annual increases in all years between 2016–17 and 2019–20. Over the whole period there was a small increase of complaints of 1.6%. Influencing this was a 10% fall in complaints between 2019–20 and 2020–21.

There are nine locations included in Table 1. Excluding no location complainants, Brisbane has been the largest source of complaints over each year for the dataset that was provided from 2016–17 to 2020–21.

There was no earlier data available that can be compared to this dataset. The trend for Brisbane has been fluctuating over the last several years and there appears to be a decline evident since 2018–19. The source of this change has been mainly in complaints against real estate agents and an ongoing reduction in complaints lodged against Letting Agents. However, there has been an ongoing growth in the number of complaints by persons not listing a location. It has grown by over 180% over the data period. This group was the largest source of complaints in 2020–21 and the lack of a location does affect the ability to make some observations about the data and the trends being observed. The other locations with large amounts of complaints were from the other populous places in Queensland—Southport and the Sunshine Coast. Complaints in other locations fell over the period examined except for Mackay and Townsville.

**TABLE 1:**  
**Complaints Date by location 2016–17 to 2020–21**

LOCATION	2016–17	2017–18	2018–19	2019–20	2020–21	TOTAL
Brisbane	518	647	627	545	397	2734
Cairns	42	46	44	35	25	192
Mackay	20	30	25	23	21	119
Rockhampton	30	24	29	30	12	125
Southport	189	189	179	161	158	876
Sunshine Coast	88	96	81	68	72	405
Toowoomba	34	28	41	31	22	108
Townsville	20	31	18	18	21	174
Wide Bay	42	26	31	42	33	174
Interstate	162	181	186	168	145	842
No Location	144	106	163	338	404	1155
<b>Total</b>	<b>1289</b>	<b>1404</b>	<b>1424</b>	<b>1459</b>	<b>1310</b>	<b>6886</b>

Source: Initial OFT Information in Elements section with analysis by Lytton Advisory 2021.

Note: Brisbane includes Brisbane, Ipswich, Logan, Northern and Southern Moreton areas.



The inclusion of interstate locations and no location affected the data as the results are diluted by the inclusion of these two categories. In Table 2, a set of data was put together for the calculation of the numbers and the percentages. Removing these two categories does remove an average of 29% of the complaints that were received by the OFT (and in 2020-21 the two categories represented 42% of all complaints). However, the prospect of an improved match in the location data and the value in the analysis did lend itself to the revised analysis.

In Table 2, the data is shown with the percentage of population and the proportion of the complaints excluding those made without a location or from interstate. It is observed that for Brisbane, Southport and the Sunshine Coast that the complaints lodged were greater than the percentage of the population. This probably reflects that these locations have a greater number of real estate agents and auctioneers and that they have a greater level of real estate agent activity. All the other locations in Queensland recorded a lower level of complaints compared to their population as a percentage of the state total.

**TABLE 2:**  
**Complaints data and population figures by location, average 2016–17 to 2020–21, in percent**

REGION	POPULATION	COMPLAINTS	COMPARATIVE
Brisbane	48.3	55.9	Above
Cairns	5.1	3.9	Below
Mackay	3.6	2.4	Below
Rockhampton	4.7	2.6	Below
Southport	12.1	17.9	Above
Sunshine Coast	7.4	8.3	Above
Toowoomba	3.2	3.2	Equal
Townsville	4.9	2.2	Below
Wide Bay	6.1	3.6	Below
<b>Total</b>	95.4	100	

Source: Census data reported by Queensland Government Statistician and OFT Information in Complaints column with analysis by Lytton Advisory 2021



## Appendix 8: Growth Rate Assumptions (Lytton Advisory)

**TABLE 1:**  
**Growth rates assumptions for Property Agents**

SPECIFIC ITEM	CALCULATION APPROACH AND ASSUMPTIONS
Continuing Professional Development (mandatory)	Growth at inflation rate which is calculated at 1.7%. Average of Queensland 2021-22 budget forecasts and projections - 2021 to 2024-25.
Continuing Professional Development (electives)	Growth at inflation rate which is calculated at 1.7%. Average of Queensland 2021-22 budget forecasts and projections - 2021 to 2024-25.
Compliance—Record Keeping (4 hours per session/activity)	No change over the assessment period.
Compliance—Annual Review	No change over the assessment period.
Training Time (days)	No change over the assessment period.
Staff Cost Per Training (\$)	Growth at inflation rate which is calculated at 1.7%. Average of Queensland 2021-22 budget forecasts and projections - 2021 to 2024-25.
Total Cost Per Agent (\$ per year)	Growth at inflation rate which is calculated at 1.7%. Average of Queensland 2021-22 budget forecasts and projections - 2021 to 2024-25.
Number of Agents	Estimate of growth trend of 0.1%. Last 5 years of data shows that the growth rates fluctuate with an overall slight decline.
REIQ Members	Estimate of growth trend of 0.1%.
New Agents	Estimate of growth trend of 0.1%.
Other Property Agents Associations	Estimate of growth trend of 0.1%.
Property Agents Requiring Training	Estimate of growth trend of 0.1%. Last 5 years of data shows that the growth rates fluctuate with an overall slight decline.
Cost of CPD (course, compliance, staff)	Growth at inflation rate which is calculated at 1.7%. Average of Queensland 2021-22 budget forecasts and projections - 2021 to 2024-25.
Property Sales, Leasing and Management	Growth at inflation rate which is calculated at 1.7%. Average of Queensland 2021-22 budget forecasts and projections - 2021 to 2024-25.
Leasing Income (Queensland)	Growth at inflation rate which is calculated at 1.7%. Average of Queensland 2021-22 budget forecasts and projections - 2021 to 2024-25.
Inefficient management	Growth in population. Forecast for 10 year period in Queensland (Queensland Statistician estimate) is 1.7%.
Number of selling agents performing inefficiently	Growth in population. Forecast for 10 year period in Queensland (Queensland Statistician estimate) is 1.7%.
Number of Agents managing properties inefficiently	Growth in population. Forecast for 10 year period in Queensland (Queensland Statistician estimate) is 1.7%.
Economic loss from sales agents performing inefficiently	Growth in population. Forecast for 10 year period in Queensland (Queensland Statistician estimate) is 1.7%.



SPECIFIC ITEM	CALCULATION APPROACH AND ASSUMPTIONS
Economic loss from sales agents managing properties inefficiently	Growth in population. Forecast for 10 year period in Queensland (Queensland Statistician estimate) is 1.7%.
Average Real Estate Fee	Calculated result.
Rental Income	Calculated result.
Percentage of Turnover Forgone	No change.
Potential Revenue Forgone	Calculated result.
Fines and Charges	Growth at inflation rate which is calculated at 1.7%. Average of Queensland 2021-22 budget forecasts and projections - 2021 to 2024-25.
Cancellation and Suspensions	Growth in population. Forecast for 10 year period in Queensland (Queensland Statistician estimate) is 1.7%.
Estimate of the impact of the complaints	Growth in population. Forecast for 10 year period in Queensland (Queensland Statistician estimate) is 1.7%.

**TABLE 2:**  
**Growth rates assumptions for Government**

SPECIFIC ITEM	CALCULATION APPROACH AND ASSUMPTIONS
Percentage of agents checked	No changes in rates over the assessment period.
Agents compliance checking	
Hourly rate (government staff)	Growth at inflation rate which is calculated at 1.7%. Average of Queensland 2021-22 budget forecasts and projections - 2021 to 2024-25.
Hours per agent	No changes in rates over the assessment period.
Court, police and OFT time for courts	Growth at inflation rate which is calculated at 1.7%. Average of Queensland 2021-22 budget forecasts and projections - 2021 to 2024-25.
QCAT	Growth at inflation rate which is calculated at 1.7%. Average of Queensland 2021-22 budget forecasts and projections - 2021 to 2024-25.
Payments for claims and receiverships	Growth at inflation rate which is calculated at 1.7%. Average of Queensland 2021-22 budget forecasts and projections - 2021 to 2024-25.
System Support and Development upgrade	Growth at inflation rate which is calculated at 1.7%. Average of Queensland 2021-22 budget forecasts and projections - 2021 to 2024-25.
Industry Licensing Unit	
Advisory panel	Growth at inflation rate which is calculated at 1.7%. Average of Queensland 2021-22 budget forecasts and projections - 2021 to 2024-25.
Additional staffing	Growth at inflation rate which is calculated at 1.7%. Average of Queensland 2021-22 budget forecasts and projections - 2021 to 2024-25.
Complaint Unit	Growth at inflation rate which is calculated at 1.7%. Average of Queensland 2021-22 budget forecasts and projections - 2021 to 2024-25.
CPD system	Growth at inflation rate which is calculated at 1.7%. Average of Queensland 2021-22 budget forecasts and projections - 2021 to 2024-25.





**TABLE 3: Growth rate assumptions for Consumers**

SPECIFIC ITEM	CALCULATION APPROACH AND ASSUMPTIONS
Number of complaints	Growth in population. Forecast for 10 year period in Queensland (Queensland Statistician estimate) is 1.7%.
Cost per complaint	Growth at inflation rate which is calculated at 1.7%. Average of Queensland 2021-22 budget forecasts and projections - 2021 to 2024-25. These are 1¾ 1¾ 2 2¼. Assume that they continue to grow at same rate for rest of period.



## References

### **Problem identification (Lytton Advisory)**

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