

Regulatory Theory and Protection of the Principal: White Collar Crime Fraud in Occupational Licensing for Property Agents

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ABSTRACT

Documented increases in trust accounting fraud indicate that there is a clear need to enhance consumer protection in the property industry. During the last 100 years, regulatory policy has been developed to exemplify the standards for social responsibility and ethical behaviour between property agents and their principal.

Regulatory theory argues over the necessity for regulation. The Positive theories of regulation examine the reason and need for regulation, whilst the Normative theories of regulation will generally include transparency, predictability and credibility for the regulatory system. With regards to property agents and their principal, the government is also interested in overcoming information asymmetries

The research methodology in this paper utilises regulatory theory concepts to research and identify the problematic areas relating to trust accounting fraud. The suggestion of a correlation between occupational licensing requirements and an increase in the number of licenses issued, and also changes within the educational requirements for occupational licenses was considered using data from New South Wales property agency licensing.

The research findings indicated some correlation with the increase of new licence and certificate applications, and trust accounting fraud. However, because of limiting data available ongoing research into this problematic area is required before rendering definite conclusions.

KEYWORDS: Trust accounting, fraud, property regulatory theory

1. INTRODUCTION

Licensing of property agents in Australia is regulated under the auspices of individual state and territory Offices of Fair Trading. In New South Wales, licensing and regulation of property agents was first introduced in the late 1800's by the New South Wales government and subsequently extended to the other states and territories. Although each jurisdiction has enacting differing provisions, requirements and penalties, all trust accounting records and procedures have mandated compliance with each jurisdictions' respective legislation.

During the last 100 years, regulatory policy has been developed to exemplify the standards for social responsibility and ethical behaviour between property agents and their principal. However, in New South Wales, documented increases in trust accounting fraud indicates that there is a clear need to enhance consumer protection in the property industry. In New South Wales, during the financial years ended 30th June 2003 to 30th June 2007, between \$362,000 to \$1,024,000 of trust funds were claimed against Fair Trading, for failure to account to the consumer. (Office of Fair Trading, May 2008).

2. BACKGROUND

It is generally acknowledged that consumers engage in property and business sales relatively infrequently, and therefore have limited knowledge of the market. Purchasing a property will usually involve a large proportion of an individuals' total wealth and it is by far the most expensive transaction a person will undertake during their life. (Office of Fair Trading, May 2008).

The regulation of property agency is now part of the Property Stock and Business Agents Act 2002 (referred to as the Property Act 2002), which is administered under the auspices of the Office of Fair Trading, New South Wales. During the last ten years from 2000 to 2010, the Office of Fair Trading, NSW has undertaken a number of reviews with regards to the Property Act. More recently, in 2008 a statutory review of the Property Act identified as one of the main objectives underpinning the Property Act, "to limit consumer risks in the property transaction process" and "to provide a licensing-based framework and business conduct requirements to limit these risks". (Office of Fair Trading, NSW, July 2008).

Research undertaken by The Strategy Partnership, Sydney, on behalf of the Office of Fair Trading endorses this belief and states that consumers are "vulnerable due to their inexperience and lack of

information about property transactions and the property market.” (Office of Fair Trading, NSW, 2007). This concept was further endorsed by the National Competition Policy Review (NCPR), (Office of Fair Trading NSW, 2008 Report) who cited those same reasons underpinning the need to regulate the activities of property agents.

Interestingly, the research from The Strategy Partnership report concluded that it was necessary to set standards of behaviour and thus legislation was the best vehicle to secure this need. Their research justified this conclusion by stating that consumers would not have the knowledge or skills to negotiate suitable expected standards of behaviour from property agents. The Office of Fair Trading 2008 report concluded that based on these findings there was a definite continuing requirement for legislation and summarised by commenting “the fact that overall consumer experiences appear to be reasonably satisfactory could be said to indicate that the legislation provides a basic safety net which appears to be generally working well.”

3. RESEARCH OBJECTIVE, METHODOLOGY and LIMITATIONS

With the documented increases in trust accounting fraud, the question arises whether there is a need to change property agency regulation to improve consumer protection. Linked to property regulation is the need for occupational licensing requirements which is widely used in Australia and also overseas.

There is scant literature written in Australia, examining the licensing requirements and quality of service provided to the consumer in property agency transactions. In contrast, America during the last few decades has undertaken a number of studies to examine the impact of occupational licensing on industry earnings, employment, and quality, amongst occupations such as doctors, lawyers, dentists and real estate brokers. Their findings could not indicate clearly the effects of licensing regulation and quality of service delivered. Quality of service delivered for real estate brokers included the broad areas of general complaints about rights and responsibilities, mishandling of a sale, and specific issues such as mishandling of trust money, unethical activity, failure to account for monies, misrepresentations in advertising or statements and refunds.

It is within the one area of “quality” issues i.e. the mishandling of trust money, which will affect the research in this paper for New South Wales regulation and highlight the concerns with the increase of trust accounting fraud reported during the last few years. It is beyond the scope of this research paper to incorporate the value of each individual transaction involved in trust accounting fraud as the Office

of Fair Trading only reports the accumulated value of fraud for New South Wales, in each financial year.

The research methodology in this paper utilises regulatory theory concepts to research and identify the problematic areas relating to trust accounting fraud, and to draw conclusions which will enlighten the reason for the increase in trust accounting fraud.

4. RESEARCH AND DISCUSSION

Generally, those who work in the property industry buying, selling, leasing and negotiating in property transactions must be either licensed or hold a certificate of registration. A licensed property agent, under the Property Act 2002 is a person who for reward is able to “negotiate or induce a range of property transactions including a sale, purchase, exchange and leasing” and to “receive money associated with these transactions” (Office of Fair Trading, NSW, May 2008). The receipt of this money requires the licensed entity to hold this money in a separate Trust Account for the exclusive benefit of their client.

A person who works in real estate in sales or property management, must be either licensed or hold a certificate of registration. Under the Property Act, the certificate holder has similar requirements with regards to negotiating property transactions, with the exception that they are not allowed to own and operate a trust account. A certificate of registration holder must work under the authority of a licensed property agent.

Therefore transactions undertaken by the property profession usually involves large amounts of money, which are held in trust by property agents. So the safe keeping of these monies held in trust and the level of competence by the people who supervise this money requires an ethical code of conduct to preserve and enhance consumer protection. In recent times, a risk management objective of the legislation has highlighted the need for the correct handling of trust money.

4.1 TRUST MONEY

Trust account money is the money that an agent has collected on behalf of their principal. Examples of trust money include deposits on sales, rent from tenants, bonds and prepaid advertising. Trust accounting is the recording, classification, reporting and analysis of all trust money received by an agency on behalf of their principal. In addition to mathematical dimensions, trust accounting is also concerned with regulatory compliance. Hence, an agency’s books and records must meet the provisions of the relevant legislation. (Antoniades, 2007).

The legislative obligations placed on real estate agents can be enormous and time consuming, however ultimately the licensee of the property agency is considered accountable for all trust money held on behalf of the property owner, tenants, purchasers and other stakeholders with a vested interest. (Antoniades 2010). In NSW, every property agent is liable at common law and statute law to account to their principal for any money held, collected, or disbursed on their behalf. Examples of a principal include landlords and vendors. The Real Estate and Business Agents Supervision Board (REBA) of Western Australian, defines trust money as “*the money is received or held by an agent or any member of an agent’s staff on behalf of another person in relation to a real estate or business sales transaction or property management transaction*”. In conclusion, trust money is broadly classified as money held by an agent on behalf of a principal for their property transaction.

Therefore, government appears to indicate acknowledgement of the large sums of money involved in real estate transactions, and the need to “safeguard” the trust accounts. This is to instil confidence and provide redress for the consumer. However, research undertaken in 2008 also identified risk relating to trust accounting could be associated with a “lack of knowledge of trust accounting”, “failure to have proper financial systems in place to monitor and review trust accounts regularly”, “failure to monitor the actions of staff” or to “comply with audit requirements and fraudulent conduct”. (NSW Office of Fair Trading, July 2008 The Report).

As mentioned earlier in this paper, the Office of Fair trading does not report the value of each individual transaction involved in trust accounting fraud. The table below shows that during the financial years ended 30th June 2003 to 30th June 2007, claims paid against the statutory compensation fund for failure to account accurately by property agencies, were between \$362,000 to \$1,024,000.

TABLE: 1
STATUTORY COMPENSATION FUND CLAIMS

YEAR	TOTAL AMOUNT PAID	NUMBER OF CLAIMS
2003	\$ 362,400	35
2004	\$ 763,524	276
2005	\$ 751,196	146
2006	\$ 1,024,096	82
2007	\$ 918,906	264

Source: The Report - Statutory review of the Property, Stock and Business Agents Act 2002, Chapter 12.

This same report also estimated that approximately \$1,089 billion trust moneys were held by property agencies for the financial year ended 30th June 2007.

4.2 REQUIREMENT FOR REGULATION

The concept of occupational licensing correlates to regulation theory and the government is generally interested in overcoming information asymmetries. Academic research has identified two basic schools of thought emerging from regulatory policy, as the positive theories of regulation and the normative theories of regulation. (Jamison and Berg 2008). The positive theories of regulation will include an examination of “why regulation occurs”, and “group theory that describes the roles of stakeholders interest in regulation”. So with regards to real estate licensing regulation, the property owners, tenants, and purchasers would represent the stakeholders. The governments’ solution with regulation requirement is to address the stakeholders individual interest such as the safekeeping of the trust funds. To this end from the inception of property agency occupational regulation in New South Wales there was expectancy for trust funds to be accountable and transparent for the stakeholder. The Property Act provides for a compensation fund to be established and maintained for the purpose of providing financial compensation to people whose money has been misappropriated by a licensed property agent. Therefore, the compensation fund is considered an important consumer protection mechanism and is a key feature of the regulatory system.

From a normative perspective the regulators encourage competition where feasible, and minimise the costs of information asymmetries. Additionally, the regulatory agency is intended to improve consumer confidence and welfare. Because of differences in the governments objectives and the real estate agency the government will adopt instruments or policies to achieve their objective. In the scenario of consumer protection with trust funds, the government has introduced legislation and penalties to deter fraudulent behaviour of the agent. So the question arises, whether in New South Wales, information asymmetries has been considered for real estate licensing provisions. Normative theories require the regulator to provide the stakeholder with information about the sector.

In a research paper undertaken by Akerlof in 1970, the author stated that “The necessity for occupational licensing has traditionally been justified on the basis of asymmetric information. The asymmetry arises when buyers are unable to differentiate the various services offered for sale in the market on the basis of quality.” Therefore, for the purpose of this research paper, we could surmise that the asymmetry arises when property stakeholders are unable to determine whether or not the person they are dealing with is a holder of an appropriate licence or certificate of registration.

Prior to 2002, property stakeholders had no access to information regarding the licensing status of the person that they were dealing with. But provisions now under the 2002 Property Act require the Office of Fair Trading to maintain a public register for licensing checks on property agents and certificate of registration holders. Therefore, prior to 2002, the government had information advantage, with regards to who held a licence or certificate of registration. This is generally referred to as information asymmetry. From 1st September 2003, licence and certificate of registration information available to the public includes the name and business address of the holder, the category of the licence or certificate, the licence or certificate number, date of issue and expiry, and disciplinary action taken against the licence or certificate holder.

Agency theory relationship is based on trust, and involves the consumer engaging a person to act on their behalf. One party is designated as the agent, and acts for and on behalf, or is a representative for the other party, designated the principal (Ross 1973). The regulatory impact for property agents is to ensure correct accountability in the handling of trust money – which has been identified as “one of the greatest areas of risk property owners face in transactions with real estate agents”. (Fair Trading 2008).

Gu, Liang and Wang (2005) developed a theoretical framework for detecting accounting fraud, using the three elements theory concept and identified interest, environment and implementation method as those three necessary elements. This theoretical concept involved the use of interest as the motivational power of fraud, environment such as the lack of environmental control providing the opportunity for fraud, and thirdly various kinds of illegal implementation methods which could trigger accounting fraud. If this was aligned to trust account agency fraud, the three elements could be applied in this way. Firstly an agent could be identified as committing the fraud due to their business not being successful and requiring funds urgently to keep their business afloat; the second element which related to regulatory control is very prevalent in New South Wales, where research and continuous discussions and amendments to the legislation have ensured that this is kept at optimum consumer requirements; and thirdly the illegal implementation methods which could trigger accounting fraud tends to be that the owner of the property agency has met the first element and therefore does not keep correct accounting records because of the missing funds; or if a staff member has committed the fraud, then there is usually an accounting cover up from the staff member.

Since the early 1930's the real estate brokerage industry throughout the United States has been stringently regulated with a great deal of variance in the licensing requirements within each state. An article in 1971 by Amdur highlighted the need for real estate agents regulation for the state of Texas, USA, citing increases in the population and the volume of land exchanged through agents as a

contributing factor. Furthermore, the continuously increasing of licenses issued to agents identified the need for more stringent regulation to regulate the “relationship between real estate agents and the public”. The licensing regulation in Texas was initially incorporated in 1939, where as in comparison to New South Wales licensing was regulated from the late 1800’s and formalised in the early 1900s.

In a research paper undertaken by Jamison and Berg in 2008, the authors contended that governments establish regulation of utilities to “improve sector performance”, and debated whether this implied to control market power and /or to facilitate competition, or to protect operation and customers from politically-driven decisions. However, it can be said that regulation of any industry requires a “control mechanism” from the regulator. In the case of occupational licensing, there does appear a trend to use educational requirements as the vehicle to determine acceptance of a licence.

A study undertaken by Johnson and Loucks in 1986 examined the entry barriers within the real estate brokerage industry in America. Items examined included the effect of differing state entry requirements in relation to the supply of practitioners and the quality of service provided. Embedded in these findings they theorised that the impact of licensure was to increase earnings and to decrease employment in the licensed occupations and concluded that regulation may either increase or decrease the quality of service provided. Johnson and Loucks pointed out that empirical investigations of the effects of regulation dealt with outcomes of licensure on wages and employment and ignored the simultaneous impact of regulation and consequence on quality. Maurizi (1980) measured quality of contractors by the number of consumer complaints in California and hypothesized that consumer complaints were a “function of the proportionate annual increase in the number of licensees”.

Maurizi also commented on the relationship between an increase in contractor license examination schools and the quality of contractors, and concluded that “consumers may be receiving a quality of service similar to what would prevail in the absence of licensing and they may be paying higher prices for that quality”. Interestingly Johnson and Loucks found the quality of service to increase as a result of fewer licensees per capita. A 10% reduction in licensees yielded a 5.7% decrease in complaints per transaction. A further empirical study in America concluded that “the level of complaints against real estate agents is smaller if the licensing board is comprised of a greater number of industry members”. (Shilling & Sirmans 1988). The result of their enquiry into the relationship between complaints against real estate agents and pass rates of the exams conducted by the licensing board, suggested that a decrease in the pass rate decreased the total number of complaints.

In this paper the data for New South Wales property licensing is applied to the suggested theory that

an increase of licensing activity is correlated to an increase of consumer and trader complaints. Table two lists the total number of consumer and trader complaints in the real estate sector from 2005 to 2009 for New South Wales.

TABLE: 2

New South Wales - Consumer and trader complaints about market place transactions

	Number of complaints
1 st July 2004 to 30 th June 2005	1,756
1 st July 2005 to 30 th June 2006	2,181
1 st July 2006 to 30 th June 2007	2,650
1 st July 2007 to 30 th June 2008	2,612
1 st July 2008 to 30 th June 2009	2,440

Source: A year in review 2008-2009 Fair Trading: serving consumers and traders in NSW

As indicated above, in New South Wales, consumer complaints increased in 2005 from 1,756 to 2,440 in 2009, which represented an increase of 38.95% in consumer complaints.

The licensing activities in New South Wales were also analysed. Data from 2001 was available and collected through to 2009. Table 3 separates the new licenses from the certificate of registration and also lists the total licenses and certificates for each of the financial years indicated below.

TABLE 3

New South Wales – Licensing Activity

	01/02	02/03	03/04	04/05	05/06	06/07	07/08	08/09
New Licenses	1,519	1,911	2,523	2,593	2,480	2,820	2,768	2,705
New Certificate of Registration	4,257	5,090	8,020	4,906	4,867	5,076	5,379	4,637
Register total for licenses	24,593	25,393	26,533	26,980	26,441	26,653	26,898	27,367
Register total for Certificate of Registration	11,509	13,671	15,378	15,482	15,711	16,456	17,495	17,223

Source: Annual Reports, Office of Fair Trading, New South Wales

Using 2005 as a base year, the data in the table above indicates from 2005 to 2009 a 1.43% increase in total licenses and an 11.25% increase in total certificates of registration. However, the new licenses issued indicated an increase of 4.32% and new certificates decreased by 5.48%.

Therefore if consumer complaints increased by 38.95% in the 2005 to 2009 time frame, there would appear to be very little correlation between the two variables and the results are in contradiction to the conclusions evaluated with the empirical studies undertaken in America. However, for the purpose of the research undertaken in this paper, which is primarily concerned with trust accounting fraud, the New South Wales data for complaints which showed an increase of 38.95% in table 2 are further analysed.

Table 4 shows that prior to 1998 trust money complaints related to 18.49% of the complaints lodged by the consumer. This figure comprises of 10.87% and 7.62% added together. However, later statistics do not separate the complaints on a percentage basis, which provides little evidence if the complaints relate to trust matters primarily or are spread evenly over the 10 items of complaints listed below.

TABLE 4
New South Wales – complaints relating to trust account matters only

	PRIOR TO 1998 complaints	2003 to 2007 Most common complaints
Mishandling of trust money	10.87%	Yes
Property Management	10.78%	Yes
Unethical activity	8.94%	Yes
Failure to account for monies	7.62%	Yes
Misrepresentations in advertising or statements	6.92%	Yes
Mishandling of a sale	6.4%	Yes
Unlicensed trading		Yes
Refunds		Yes
General complaints about rights and responsibilities		Yes
Repairs and Maintenance		Yes

Source: *The Strategy Partnership 2007, National Competition Policy Review 2007, The Office of Fair Trading 2010,*

In 2007, the Office of Fair Trading estimated that there were around \$1,089 billion of funds at risk and between 2003 and 2007 there was a range from around \$362,000 to \$1,024,000 payments from the statutory compensation fund for failure to account.

Therefore, because of the lack of detailed data available for complaints, an analysis was undertaken from the claims against the compensation fund. The table below (number 4) has been extracted from available data from 2003 to 2007 inclusive. If the year 2003 is used as the base year, the reported increase for money claimed each year has risen by 153.56% in the year 2007. With regards to the number of claims made against the compensation fund, this has risen from 35 claims in 2003 to 264 in 2007 which represents an increase of 654.28% in 2007.

The new Property Act was introduced in September 2003, hence the reason for using 2003 as the base year, as the number of claim details shown in 2003 on table 5, would have been from the previous regulatory regime. The Property Act included major reforms to the educational requirements for licensing and the removal of the minimum of two years of work experience prior to obtaining a real estate agents licence.

If we revisit table 3, and analyse the new licenses and certificates issued during 2003 and compare this to 2009, the results indicate an increase of 41.55% in 2009 for new licenses issued, and a decrease of 8.9% for certificates issued in 2009. Therefore whilst it was not possible to draw a correlation between trust accounting fraud and the increase of total licenses and certificates held, there does appear to be a link between the increase of new licenses and consumer complaints with property agents. The decrease in certificate of registration holders is most likely due to the removal of the minimum of two years of work experience prior to obtaining a real estate agents licence.

TABLE 5
STATUTORY COMPENSATION FUND CLAIMS

YEAR	PERCENTAGE INCREASE OF AMOUNT PAID	PERCENTAGE INCREASE OF NUMBER OF CLAIMS	TOTAL AMOUNT PAID	TOTAL NUMBER OF CLAIMS	NUMBER AND TYPE OF CLAIMS <i>Failing to account for</i>
2003	Base year	Base year	\$ 362,400	35	Bonds 9 Sales Deposits 6 Rents collected 20
2004	110.69%	688.57%	\$ 763,524	276	Failing to account 1 Bonds 52 Sales Deposits 23 Rents collected 197 3
2005	107.28%	317.14%	\$ 751,196	146	Bonds 28 Sales Deposits 10 Rents collected 104 Strata Plan 4 Funds
2006	182.59%	134.28%	\$ 1,024,096	82	Failing to account 1 Bonds 11 Sales Deposits 15 Sales Proceeds 1 54
2007	153.56%	654.28%	\$ 918,906	264	Failing to account 7 Bonds 33 Sales Deposits 21 Rents collected 202 1

Source: *The Report - Statutory review of the Property, Stock and Business Agents Act 2002*, Chapter 12 and various reports from the Office of Fair Trading

In conclusion table five clearly shows an increase in trust accounting fraud, since the introduction of the new legislation in September 2003. However, having regard to the concept that perhaps educational requirements did play a role in this increase, further analysis would be required. Details such as the length of time the agent had held their license, was the fraud committed by the licensed person, or by an employee, educational requirements, length of time taken to detect the fraud and various other considerations must be examined.

Interestingly, applicants who apply for a licence or certificate must satisfy the requirement of a “fit and proper” test. This usually involves an educational requirement and a thorough check of the police records of a persons criminal history (Property Stock and Business Agents Act 2002.). Generally, applicants who do have a criminal record are not allowed to hold a licence or certificate of registration under the Property Act. Therefore, in the majority of cases it would be likely that the trust accounting fraud committed would be a first time offence for a criminal matter.

There appears to be a reflection on the quality of the training and implementation of the National Training framework with valid reasons if stakeholders are concerned with educational requirements and so are calling for the reinstatement of experience. However, government policy is to reduce red tape and compliance costs but to maintain an appropriate level of consumer protection.

Currently, there is no comparative data regarding the concept of trust accounting fraud relating to an increase in the issue of licenses, or the quality of education. Whilst education requirements have changed over the last 7 years, and there is no longer a mandatory two year experience prior to obtaining the real estate licence, the Property Act, does however provide for mandatory continual professional development and the Office of Fair Trading continues with random audits and quality control visits to agencies premises. Additionally disciplinary measures exist for agents who do carry out fraud. Table six lists from 2005 to 2008 the number of actions against various offences committed under the Property Act. Importantly the Office of Fair Trading reports that a high percentage of agents who did not lodge a trust account audit report within the required time frame, were found to have committed trust account fraud.

TABLE 6
PROSECUTIONS UNDER PROPERTY STOCK AND BUSINESS AGENTS ACT 29th JULY
2005 to 14th FEBRARY 2008

SECTION	OFFENCE	NUMER OF ACTIONS	TOTAL PENALTIES
S111(b)	Failure to lodge trust account audit report	20	\$14,063
S113	Failure to lodge statutory declaration indicating that no trust money was held	32	\$11,601
S211(2)	If the licensee or registered person fraudulently converts the money or any part of that money to his or her own use or to the use of any other person, the licensee or registered person is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years	1	18 months imprisonment sentence suspended on entering a s12 Good Behaviour Bond for 18 months
S211(3)	If the licensee or registered person fraudulently omits to account for, deliver or pay the money or any part of the money to the person from whom it was received or the person or persons entitled to it, the licensee or registered person is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years.	1	S9 Good Behaviour Bond for 3 years

Source: Source: *The Report - Statutory review of the Property, Stock and Business Agents Act 2002*, Chapter 12. A year in review 2008-2009 Fair Trading: serving consumers and traders in NSW

Penalty notices are also issued for minor breaches and these are not included in the above table. The penalty notices are an enforcement tool, which is available in a range of statutes, including the property act. The person served with the notice is able to pay a fine rather than to have the alleged offence dealt with in a court. If the detected breach in the legislation is straightforward to detect without any questions of intent, then the penalty notice is issued, otherwise the matter will need to be dealt with in court.

Table 7 shows the penalty notices and successful prosecutions for the 12 months ended 30th June 2009.

TABLE 7

PENALTY NOTICES

1st July 2008 to 30th June 2009

DEFENDANTS	OFFENCES	PENALTIES
31	38	\$50,050

Source: A year in review 2008-2009 Fair Trading: serving consumers and traders in NSW

SUCCESSFUL PROSECUTIONS

1st July 2008 to 30th June 2009

DEFENDANTS	OFFENCES	PENALTIES
31	38	\$50,050

Source: A year in review 2008-2009 Fair Trading: serving consumers and traders in NSW

Policy makers will continually implement strategies to improve consumer satisfaction and protection. Trends indicate an increase in trust accounting fraud, with an increase in penalties and prosecutions, however these actions do not appear to deter the fraudulent activities. Fortunately the implementation of the Compensation Fund affords itself as a vehicle to compensate the consumer for monetary losses.

Various ideas and concepts have been discussed in an attempt to uncover the reasons surrounding the trust accounting fraud, but further data is required for ongoing research into this problematic area. Guntermann and Smith (1988) concluded that variation in enforcement efforts across states in America was a principal factor explaining the variation in complaint levels. The authors also provided statistical evidence from a cross-sectional study of educational and enforcement levels and concluded that prelicensing education requirements did not appear to have “a material impact on complaints”.

5. CONCLUSION

This research paper set out to investigate the reasons for an increase in trust accounting fraud over the last few years. Because Australia had scant literature in this field of research, America was examined using a number of articles which attempted to suggest a correlation between occupational licensing requirements and an increase in the number of licenses issued, and also changes within the educational requirements for occupational licenses.

Regulatory theory was identified as a key component in occupational licensing requirements. Data extracted from New South Wales was analysed in an attempt to identify the problematic areas relating to trust accounting fraud. However, there was no substantial link between the increase in total licenses and certificates of registration from 2005 to 2009, but there did appear to be a huge increase in the new applications per year, from 2003 to 2009 for licenses and certificates with the possibility that this could explain the reason for the increase in trust accounting fraud. Claims against the compensation fund rose from 2003 to 2007 by 153.56% with a total of \$1,024,000 paid out during the year 2007. The new Property Act was introduced in 2003, with major changes to the education requirements for licenses and certificate holders, and included the abolition of the mandatory two year minimum work experience, prior to the granting of a licence. These research findings indicate some correlation with new licence and certificate applications and trust accounting fraud. However, to prove if educational requirements are a contributing factor to trust accounting fraud further analysis would be required. This would include data such as the length of time the agent had held their license when the fraud was committed by the licensed person, or by an employee, educational requirements, and length of time taken to detect the fraud would be some of the variables to consider.

Therefore, with the increase in trust accounting fraud, and an increase in penalty notices and prosecutions, ongoing research into this problematic area is required before rendering definite conclusions. An assortment of research questions in the next section of this paper, have been developed to assist with the next stage of the research plan for this topic in white collar crime.

FURTHER RESEARCH

The following research questions must be examined before final conclusions can be reached on reasons and causes for white collar crime in occupational licensing.

Each fraud case would require research and analysis within the following streams:

1. *Was the fraud committed by a licensed person or a certificate of registration holder?*

IMPACT: Educational requirements differ for licenses and certificates.

2. *Was the fraud committed by an owner of the business or by an employee of the business?*

IMPACT: Determines the level of supervision by the licensee in charge and the level of “internal control procedure” in the office to minimise risk in crime and fraud.

3. *Was the fraud committed by a person who had “X” number of years experience in the industry and in particular the handling of trust money.*

IMPACT: Determines the level of work experience in the industry and in particular experience in handling trust money. Also links back to question number 2.

4. *Identify the relevant educational method used to obtain the licence or certificate of registration. eg did the person complete a property diploma course; or complete a property Certificate IV course; or perhaps received recognition of prior learning.*

IMPACT: Determines the level of educational information for property. Many educational institutions offer fast track courses over 15 days to qualify for a licence as opposed to previous educational requirements which required 12 months of full time study and a minimum of 2 years work experience. Links back to questions 1, 2, 3,.

REFERENCES

- Akerlof, G. (1970), The Market for Lemons: Qualitative uncertainty and the Market Mechanism. *Quarterly Journal of Economics*, 488-500
- Amdur, A.R. (1971), The Real Estate License Act – Synopsis, Elaboration and Comments, *South Texas Law Journal* pp 269-290.
- Antoniades, H. 2010, Real Estate Trust Accounting, 7th Edition, *Accounting Real Estate Publications*, Sydney.
- Antoniades, H (2008), Strata Living and the 10 year sinking fund plan, *Pacific Rim Real Estate Society Conference*, Kuala Lumpur
- Antoniades, H (2009), A Preliminary Study on the use of forensic accounting techniques to determine property agency trust accounting compliance, *Pacific Rim Real Estate Society Conference*, Sydney
- Antoniades, H (2010), A Preliminary Study of the proposed National Licensing System for Property Agents Trust Accounts, *Pacific Rim Real Estate Society Conference*, Christchurch.
- Gu, L & Liang J & Wang J (2005), Theoretical Framework and Method of Detecting Accounting Fraud, *Journal of Modern Accounting and Auditing*, Vol. 1. No. 7 pp 67-71
- Guntermann K.L. & Smith R.L. (1988) Licensing requirements, enforcement effort and complaints against real estate agents. *The Journal of Real Estate Research*, Vol 3, No. 2, pp11-20
- Jamison, M.A & Berg S.V. (2008), Annotated reading list for a body of knowledge on infrastructure regulation, University of Florida, Public Utility Research Centre.
- Johnson, L.L. & Loucks, C. (1986), The Effect of State Licensing Regulations on the Real Estate Brokerage Industry, *AREUEA Journal*, Vol.14, No. 4. Pp567 – 582
- Maurizi, A. (1980), The Impact of Regulation on Quality: The Case of California Contractors. In *Occupational Licensure and Regulation*, 26-35. American Enterprise Institute for Public Policy Research, 1980.
- Office of Fair Trading (2007), Report by the Strategy Partnership, Sydney.
- Office of Fair Trading (May 2008), *Report: Statutory review of Property, Stock and Business Agents Act 2002*, NSW Office of Fair Trading, Sydney
- Office of Fair Trading (July 2008), *Statement of Intent, Consultation on proposed reforms to the Property, Stock and Business Agents' Act 2002*, NSW Office of Fair Trading, Sydney
- Office of Fair Trading (January 2010), *A year in review 2008-2009 Fair Trading: serving consumers and traders in NSW*, NSW Office of Fair Trading, Sydney
- Property Stock and Business Agents Act 2002 and the associated Regulations, New South Wales (State).
- Real Estate and Business Agents Supervision Board (REBA) Government of Western Australia *Real estate trust accounting A reference manual December 2005*, Western Australia, Office of Fair Trading.
- Ross, S. 1973. The Economic Theory of Agency: The Principal's Problem. *American Economic Review*, Vol 63, No 2, pp134-139.
- Shilling J.D. & Sirmans C.F. (1988), The Effects of Occupational Licensing on Complaints against Real Estate Agents, *The Journal of Real Estate Research*, Vol 3, No. 2.