

# Regulatory Theory Applications Underpinning the National Licensing System for Educational Requirements in Property Licensing

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## ABSTRACT

In July 2008, the Council of Australian Governments (COAG) agreed to establish a national licensing arrangement for seven occupational areas, including the building and property sector licensing, with respect to builders, property agents, conveyancers and valuers. The aim of these reforms is to establish a more uniform licensing system within these jurisdictions. Currently, these licensing requirements are managed under the auspices of individual state and territory Offices of Fair Trading. However, despite uniformity in the choice of regulator, the licensing provisions themselves are not uniformly designed, or enforced. For example, in New South Wales, the regulation of property agency is part of the Property Stock and Business Agents Act 2002, and the associated regulations. The purpose of this research paper is to analyse the different State and Territory laws and regulations applicable to the educational requirements for property agency licensing and to explore appropriate governance requirements for a uniform model of educational qualifications. The paper uses regulatory theory applications to evaluate the current educational requirements for the property licensing systems operating within Australia. It is argued that a national model for educational qualifications for licensing is feasible; however, transitional rules will need to be implemented to allow each jurisdiction the opportunity to phase-in the recommended changes gradually.

## KEYWORDS

builders, education, governance, national licensing, property agents

## INTRODUCTION

In July 2008, the Council of Australian Governments (COAG) agreed to establish a national licensing arrangement for seven occupational areas, including building and building-related occupations, valuers and property agents. The aim of these reforms is to create a more uniform licensing system across state and territory borders and provide “for a more mobile workforce” (COAG, 2008). At present licensing is managed under the auspices of individual state and territory Offices of Fair Trading and these individual

regimes have followed historical patterns reflecting the ad hoc and inconsistent development of the regime. It is argued that this lack of consistency is counter-productive to the development of a seamless property market throughout Australia and can lead to inefficiencies and gaps in consumer protection.

So whilst each jurisdiction established regimes that mandated compliance with the legislation each State and Territory also enacted differing provisions, requirements and penalties. Currently, licence holders are required to hold separate licences in the appropriate state or territory where the work is being performed. In 1992, the Mutual Recognition Act was introduced to facilitate the movement of property agents around Australia by recognising licences granted in one jurisdiction as suitable for another jurisdiction. For example a licensed agent in New South Wales, would be able to work as a licensed agent in Victoria. However, there were still limitations and barriers imposed, such as education qualifications, which hindered property agents to move around freely within Australia. It is envisaged that with the introduction of the National Occupational Licensing System (NOLS), licence holders will be able to work in any state or territory with a single national licence.

The purpose of this research paper is to analyse the different State and Territory laws and regulations applicable to the educational requirements for property agency licensing and to explore appropriate governance requirements for a uniform model of educational qualifications. Property agency licensing includes, real estate agents, business agents, strata managing agents, stock and stations agents, and auctioneers. Therefore, valuation licences are not considered a part of the property agency cluster, but fall into the general area of property licences, with different legislative controls and requirements. The paper commences with a discussion of the purpose and intent of the National Licensing System, and then leads into the next part of the paper which uses regulatory theory applications to evaluate the current licensing system and the educational qualification requirements operating in Australia.

## THE NATIONAL LICENSING SYSTEM – PURPOSE AND INTENT

The Council of Australian Governments (COAG) commenced in 1992 and is the peak intergovernmental forum in Australia. Its members consist of the Prime Minister, the Premiers of each of the six states, the Chief Ministers of the Two Territories and the President of the Australian Local Government Association. The function of COAG, according to their website, “initiates, develops and monitors implementation of policy reforms that are of national significance” and which “require co-operative action by Australian Governments”. Assistance is also given to COAG through institutional arrangements such as Commonwealth-State Ministerial Councils, Intergovernmental

Agreements and national strategies (NLA for Specified Occupations 2008). Together, these arrangements comprise the core of Australia's governance arrangements for the design and implementation of uniform regulation. According to the business web dictionary, governance is defined as the "establishment of policies and continuous monitoring of their proper implementation". Hence the forum provided by the COAG facilitates the drawing together of stakeholders such as the State and Territory governments in a way that supports co-operative decision-making.

The COAG has chosen the development of the National Licensing System (NLS) as part of its regulatory reform agenda. As a consequence, the COAG aims to 'remove overlapping and inconsistent regulation between jurisdictions' (NLA for Specified Occupations 2008) for seven occupational areas, including property sector licensing, with respect to property agents, conveyancers and valuers. It is anticipated that these changes (NLA for Specified Occupations 2008 and 2009), will lead to many positive outcomes, such as:

- Improved business efficiency and the competitiveness of the national economy
- Reduced red tape
- Improved labour mobility and enhance productivity

The NLS will be administered by an established National Licensing Board (NLB) which will bear the responsibility of the NLS legislation. All jurisdictions will receive the benefit of the services from the NLB who will delegate the operation of the licensing services. The benefits anticipated with the establishment of the NLB will be to minimise disruptions in the transitional and implementation stages of the proposed reforms. The NLB will be responsible to the Ministerial Council for Financial Federal Relations (Regulation Impact Statement April 2009). Essentially under the new reforms, licensees will be able to operate throughout Australia on a single and uniform licence.

Victoria has been selected as the host jurisdiction for the NLS legislation. Therefore, once the legislation has been passed by the Victorian Parliament, the remaining States and Territories will be required to adopt the same laws within their own jurisdictions. Thus it is envisaged that the NLS legislation will define the "structure and functions" of the licensing system operating in Australia's property sector by means of co operative national legislation (Regulation Impact Statement April 2009).

## ISSUES WITH THE CURRENT PROPERTY LICENSING SYSTEM

At present, there is little consistency regarding property licensing in the various jurisdictions. Accordingly a property licensee is unable to work throughout Australia without holding valid licences in each jurisdiction. Different State and Territory regulatory bodies are responsible for the administration, entry criteria, and ongoing

conduct requirements for licensees. Moreover, each body has varying requirements with respect to fundamental licensing matters such as compliance and disciplinary procedures, updated registers of licensees, educational qualifications and continuing professional development requirements. Importantly licences which are issued in the property services sector for property agents, business agents, strata managing agents, and stock and station agents have different parameters, scope of work and entry requirements. For example, the table below, identified as Table 1, indicates the range of fees applicable to four occupational licences, across Australia. The fees set out in the table include the cost for a licence in the first year and also on a continuing basis. These fees are taken from the highest and lowest cost within each particular licence category.

Table 1 – Range of fees for licences

Building Individual building contractor (new)	\$333.00 to \$1,010.65
Electrical Individual electrician/qualified supervisor	\$ nil to \$350.00
Property Individual real estate agent (new)	\$262.40 to \$1,060.50
Maritime Master Class 3 (new)	\$29.14 to \$304.66

*Source: 2009 Offices of Fair Trading within each jurisdiction*

As indicated above in Table 1, there is no consistency with the licence fee structure and there are similar issues with the licence nomenclature and also the duration of the licence. The existing licence administration fees structure obviously lends itself to a range of complex and time consuming problems.

Businesses and consumers are ultimately bearing the burden of these various direct and indirect compliance costs and differing regulatory requirements. Some businesses hold multiple licences across Australia, in order to carry out their work, and these costs can be very significant (NLS for Specified Occupations 2008).

Furthermore, these direct and indirect costs contribute to a greater proportion of the total costs for small to medium sized businesses. The number of businesses affected is growing at a faster rate than the growth of the business economy. For example, in Table 2, the construction industry business growth represents a large majority of the people employed in the industry and requiring some form of licence within their own jurisdiction.

This table indicates the fast growth over the last few years for employed tradespeople, who in New South Wales must hold appropriate licences for each category of their work. Similarly, if these tradespeople also wish to work in another state or territory, the appropriate licence for that jurisdiction must also be held by the tradesperson.

Table 2 – Construction industry

Dates	Type of employment	Employed staff	Business growth
1st July 2003 to 30th June 2007	Tradespeople	Less than 20	45.9%
1st July 2003 to 30th June 2007	Licensed Contractors	Less than 20	11.3%

*Source: 2009 Offices of Fair Trading within each jurisdiction*

Table 3 shows the percentage growth of businesses that operate in more than one jurisdiction. Interestingly both Construction and Property indicate a huge growth of businesses who operate in more than one jurisdiction and therefore are burdened with the additional task of licences and compliance costs for every jurisdiction.

Table 3 – Construction and property industry

Dates	Industry	Two jurisdictions	More than one jurisdiction
1 <sup>st</sup> July 2003 to 30 <sup>th</sup> June 2007	Construction	19.9% growth	30% growth
1 <sup>st</sup> July 2003 to 30 <sup>th</sup> June 2007	Property	10.4% growth	22% growth

*Source: Australian Bureau of Statistics*

It could be reasoned that even though property has sustained a 22% growth (as indicated in figure 3 above) the introduction of “mutual recognition” within the jurisdictions, for property licences would have eased the burden of compliance and lack of uniformity. However, a licence issued in one jurisdiction can be the equivalent of a number of different licences in another jurisdiction. For example, in New South Wales there are separate licences for Real Estate Agent, Business Agent, Strata Managing Agent, Stock and Station Agent, and Auctioneer, yet to undertake the same scope of work in Victoria only one licence is required for a Real Estate Agent and Business Agent. So whilst mutual recognition does exist, because of the varying licensing regimes, each individual is required to apply for separate licences, pay the prescribed fee and meet the different skills and non-skill requirements in each jurisdiction. This raises concerns over the unnecessary costs, demanding and repetitive work required to sustain current licences. Therefore, businesses working in multiple jurisdictions must comply with the regulatory requirements of each jurisdiction. Table 4 is a summary of the various licences available to property agents in each of the states and territories.

Table 4 – Property industry: licence categories in each jurisdiction

Occupational Area	NSW	VIC	QLD	WA	SA	TAS	ACT	NT	TOTAL
Property	14	1	10	5	2	4	7	11	54

*Source: National Licensing System for Specified Occupations: Consultation Regulation Impact Statement October 2008*

The term “property” in Table 4 includes property agents, business agents, strata managing agents, stock and station agents, conveyancers and valuers. This can consist of different licence categories, classes and subclasses, and licence endorsements.

There are currently 103,435 licences held in the property area, across Australia. (NLS July 2009). The Productivity Commission has estimated that if the NLS reforms were to proceed there would be an economic benefit of between \$1.5 billion and \$4.5 billion (Regulation Impact Statement April 2009).

Table 5 indicates as at 28th March 2008, a listing of the categories and licences and/or certificates held in each category for New South Wales, for the property industry.

Table 5 – Property industry: licence categories in each jurisdiction for New South Wales

Real Estate Agents	14,821
Stock and Station Agents	2,882
Business Agents	2,748
Strata Managing Agents	1,373
On-Site Residential Property Managers	124
Corporations	5,058
Certificate of Registration	17,088

*Source: Regulation Impact Statement October 2008 and April 2009*

In contrast to the information above for New South Wales in Table 5, the state of Victoria requires only one licence for the category of real estate agent and business agent.

## A COMPARATIVE ANALYSIS ON EDUCATIONAL REQUIREMENTS FOR PROPERTY LICENSING FOR EACH JURISDICTION

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 Stock and Business Agents 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” (Office of Fair Trading,

NSW, May 2008). A certificate of registration holder must work under the authority of a licensed property agent.

Table 6 is a compilation of relevant acts and regulations for property licensing across the Australian jurisdictions.

Table 6 – Property industry: governance for each jurisdiction

JURISDICTION	GOVERNANCE
NSW	Property Stock and Business Agents Act 2002 and the associated Regulations
VIC	Estate Agents Act 1980
QLD	Property Agents and Motor Dealers Act 2000
WA	Real Estate and Business Agents Act 1978 and Regulations 1979
SA	Land Agents Act 1994
TAS	Property Agents and Land Transaction Act 2005
ACT	Agents Act and Regulation 2003
NT	Agents Licensing Act and Regulations 2009

*Source: Each jurisdictions Office of Fair Trading December 2010*

Each jurisdiction has its own provisions regulating property agents and licensing entry requirements; and these provisions have a mix of similarities and differences with each other. Competency based qualifications have been gradually introduced for occupational licensing. The National Training Information Service provides to the property industry the units of competency for the various sectors. Each jurisdiction has a training authority to oversee the implementation of the units of competency. Competency has been described as “the application of knowledge and skill in order to achieve the performance standard required for some specified workplace activity” (Office of Fair Trading, July 2008).

Therefore, broad similarities amongst the regimes are the requirement for all individuals, for any type of licence category, to complete units of competency from the Property Services Training Package (CPP07). In addition, each jurisdiction states that the underpinning knowledge, within these units of competency, must be based on the relevant laws within the appropriate state or territory. The units of competency are very prescriptive within each jurisdiction. There are compulsory core units, compulsory common units and compulsory elective units. Depending on the type of licence, and duties to be performed the number of units varies from 4 core units to 10 core units. For example, as shown in Table 7, to obtain a business agents licence in New South Wales, an individual must complete 8 core units and 4 elective units, being a total of 12 units. However, if the same individual wanted to obtain the education qualifications for a real estate agents licence the individual would not necessarily be required to complete 24 units. In this instance there is only one common core unit for these two licences, and so

the individual would need to complete 4 core units; however because there are 2 common elective units the individual would need to complete 17 elective units.

Table 7 – Units of competency for New South Wales licences

	CORE	ELECTIVE	TOTAL
Real Estate Agent	5	19	24
Business Agent	8	4	12
On site residential property manager	10		10
Stock and station agent	12	9	21
Auctioneer – stock and station	14	9	23
Auctioneer – real estate	7	19	26
Buyers agent	4	5	9

*Source: Office of Fair Trading New South Wales December 2010*

The data in Table 7 only relates to property agency licensing. This does not include licensing requirements for valuation work or licensing for a conveyancer.

In contrast Victoria has only one licence category, with a total of 24 units of competency. Of these 24 units, 21 are common units with the Real Estate Agents licence requirements in NSW, but only 4 are common units with the Business Agents licence requirements in NSW. The reason for these differences relates to the prescriptive approach by New South Wales to nominate relevant units of competency relating to each licence category.

However, it can be argued that New South Wales adopts a more selective approach when nominating relevant units of competency. Modules such as appraise a business; list business for sale; negotiate sale and manage sale to completion or settlement; obtain prospects for listing; promote and market listed business; work in the business broking sector are all specifically written for the business agency sector to acquire specialist knowledge of the industry. In comparison Victoria approaches the educational requirements from a generic perspective and has one common licence for all categories. An advantage with one common licence is less paperwork and less red tape, and the educational requirements are streamlined and simplified. A disadvantage of this method, though, is the loss of specialised knowledge for each category of licence. Hence it could be viewed that the educational requirement in New South Wales offers the consumer the best advice and expertise for the discipline in which the agent is licensed.

Western Australia and Queensland also had similar units of competency with Victoria and New South Wales, however not one state had identical units of competency for any of the licence categories. A further anomaly was the qualification link to the units of competency. New South Wales and Victoria mandate the minimum qualification to be a Certificate IV with the relevant units of competency; whereas Queensland, Western Australia, Tasmania, and the ACT prescribe a Diploma level of qualification for licensing. Furthermore Western Australia and Victoria also had the units of competency



embedded in some of their property courses offered at University. These varying educational qualifications are further complicated when assessed against each jurisdictions differing licence categories.

The analysis disclosed only one common compulsory core unit in all states and territories. The unit of competency, CPPDSM4006A, Establish and manage agency trust accounts, is a compulsory core unit in all states and territories for licensing purposes, where the licence category requires the agent to handle trust money. Trust money is broadly classified as money held by an agent on behalf of a property owner, tenants, purchasers, and other stakeholders. Trust Accounting is the recording, classification, reporting and analysis of all trust money received by an agency on behalf of their principal (Antoniades 2010). Therefore, the provisions in trust accounting are an important governance mechanism that aims to protect consumers.

Continuing professional development also featured predominantly with all of the states and territories. There were however, varying topic areas listed and different credit points allocated against each licence category. Additionally, Western Australia was the only state which required an individual to also submit their financial statements with their licence application.

There is scant literature written in Australia, examining the educational licensing requirements for occupational licensing. However, 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. The development of educational licensing requirements, which was only introduced approximately 35 years ago, was considered a suitable solution to help raise the standards in the property profession.

## REQUIREMENT FOR REGULATION

The concept of occupational licensing is underpinned by regulation theory. 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 include an examination of “why regulation occurs”, and “group theory that describes the roles of stakeholders interest in regulation”. The government’s solution with regulation requirement is to address the stakeholders individual interest such as consumer protection and ethical behaviour by property agents. To this end the government has introduced minimum educational requirements and continuing professional development. So with regards to real estate licensing regulation, the property owners, tenants, and purchasers would represent the stakeholders.

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, 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 for example 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 in New South Wales 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, NSW, 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. In New South Wales, 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. Currently most states and territories have gradually introduced legislation, similar to New South Wales, where a public register of licence holders is now available.

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 compliance with the legislation. Therefore, meeting the educational requirements initially to obtain the real estate licence is the first step, and each year following, the agent must undertake continuing professional development.

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 continuous increasing of licences issued to agents identified the need for a 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, followed closely by the majority of the other Australian states and territories.

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 and the ongoing renewal process for the licence.

## CONCLUSION

This research paper set out to evaluate the current educational requirements for property licensing. The analysis disclosed that each jurisdiction has its own provisions for the regulation of property agents and the relevant licensing entry requirements; and these provisions have a mix of similarities and differences with each other. One of the major problems identified with the differences in the educational requirements was the relationship with the different category of licences and the selection of the units of competency. For instance, New South Wales has 14 licence categories and Victoria has one licence category. Furthermore each state is able to select units of competency from the National Property Services Training Package.

It was argued that one common licence would result in less paperwork and less red tape, and the educational requirements could be streamlined and simplified. However the disadvantage to this approach could be the loss of specialised knowledge for each category of licence. Therefore, if the national licensing system were to be implemented, it would be necessary to maintain appropriate educational standards for new licences, and the maintenance of skills through the expansion of continuing professional development.

The analysis disclosed CPPDSM4006A, Establish and manage agency trust accounts, as a compulsory core unit in all states and territories for licensing purposes, where the licence

category requires the agent to handle trust money. However, there were no other common units of competency identified.

In conclusion a national model for educational qualifications for licensing is feasible; however, transitional rules will need to be implemented to allow each jurisdiction the opportunity to phase-in the recommended changes gradually. Underpinning the success for the national model will be the introduction of a single national licence to work in any state or territory.

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