

15 June 2022

Real Estate Authority
PO Box 25 371
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Wellington 6140

SUBMISSION on Real Estate Authority's Fit and Proper Guidance Consultation

1. Introduction

Thank you for the opportunity to make a submission on the Real Estate Authority (the REA) Fit and Proper Guidance Consultation (the Consultation). This submission is from Consumer NZ, an independent, non-profit organisation dedicated to advocating on behalf of New Zealand consumers. Consumer NZ has a reputation for being fair, impartial and providing comprehensive consumer information and advice.

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2. General comments on the Consultation

Consumer NZ supports the publication of guidelines for the 'fit and proper' person and 'proper' person test (the Guidelines) under the Real Estate Agents Act 2008 (the Act). However, we consider the Guidelines could be made clearer and more concise.

We have set out our answers to the specific questions in the Consultation below.

3. Our responses to the questions in the Consultation

Question 1 – *Do you consider the rationale for the guidelines to be clear?*

Yes, Consumer NZ considers the rationale for the Guidelines is clear. We agree the Guidelines will increase certainty and transparency within the profession. They will also provide the public assurance that there is a robust assessment process and protections in place to maintain high standards in the profession.

Question 2– *Are the guidelines easy to read and understand?*

We consider the Guidelines are difficult to read and understand. There is also some repetition and unclear wording. Some examples of wording that would benefit from review include:

- Paragraph 6, page 5 notes: *“The Registrar must assess the risk to the profession and future misconduct at the time of the application”*. It is unclear how the Registrar can assess future misconduct that has not occurred at the time of the application. We suggest rephrasing this sentence to refer to the *“possibility of future misconduct”*.
- Paragraph 6, page 5 notes: *“Punishment for past conduct has no place in the evaluation”*. We are unsure what the objective of this sentence is. It appears inconsistent to the sentence above which requires that future misconduct should be assessed, but not past conduct. We recommend removing this sentence or rephrasing it.
- Paragraph 8(a), page 5 notes: *“Some convictions are inherently problematic ...”*. It is unclear to us what the meaning of *“inherently problematic”* is in this sentence. We recommend amending the sentence to clarify the meaning of this.
- Paragraph 9, page 6 notes: *“The ‘fit and proper’ person standard is a high one ...”* and *“... must not lightly deprive someone who is otherwise qualified of the opportunity ...”*. We consider the words *“high one”* do not add any clarity. Additionally, it is unclear what is meant by *“lightly deprive”*. We recommend expanding on these sentences to provide further descriptions, so that the meaning is clear.
- For brevity, paragraphs 7(a) to (e), page 7 could be combined. We suggest combining the sentences along the lines of:

“...is the subject of:

- criminal proceedings;
- professional disciplinary proceedings;
- a complaint;
- an investigation; and/or
- an inquiry

in New Zealand or another country, and the Registrar believes on reasonable grounds that those proceedings reflect adversely on the person’s suitability to practise as a real estate licensee. ”

- The last sentence on page 9 notes: *“It is an offence not to notify of a change of circumstances”*. We suggest including reference to the legislation that creates the offence.

Finally, instead of using gendered pronouns such as ‘his’ and ‘her’, REA should consider using gender-neutral terminology such as ‘the applicant’, ‘the person’, and ‘the real estate licensee’.

Question 3– *Do you agree with the content and scope of the guidelines? Do you think the guidelines cover the right factors? Do you think any factors should be added or removed?*

We agree with the content and scope of the Guidelines. However, some additional factors may be relevant. For example, REA should consider including:

- the need for the licensee to act in the clients’ best interests in Guiding Principle 3. We also question whether the reference to “avoiding conflicts of interest” is correct or whether there also needs to be a reference to managing conflicts of interest.
- personal family, whānau, community, and cultural background in Guiding Principle 8.

Thank you for the opportunity to provide comment.

ENDS