

GIVE LICENSEES THE COMMISSION THEY DESERVE...

A ROYAL COMMISSION INTO REAL ESTATE PRACTICES

#REALESTATEROYALCOMMISSION



Dear NSW Fair Trading,

Following on from the government's commitment to improving compliance and enforcement in the building industry, we are writing to express our concerns regarding the increased frequency and severity of safety compliance issues rising within the property services sector.

In light of the events that took place surrounding the case of Miata Jibba (who died in a house fire in 2016), the NSW Coroner handed down a 20-page report of the Inquest into her death. The NSW Coroner made 13 recommendations arising from that Inquest, including 10 recommendations that impacted the then Minister for Better Regulation and Innovation Kevin Anderson's portfolio.

As you are aware, this resulted in a change to The Residential Tenancies Regulation 2019, where an explicit obligation was introduced on landlords and their agents - requiring them to carry out repairs to smoke alarms as a matter of urgency, with the manner, time period and type of smoke alarms. However, the laws introduced after the Miata Jibba case still haven't addressed the issue of unchecked smoke alarms to prevent fires in rentals. There is also evidence, that changing laws every time someone dies in a rental property, doesn't prevent further deaths and injuries - especially when the regulator is not enforcing them!

Information and statistics on fires and other emergency incidents

Since, the changes to smoke alarm legislation for rented homes, and according to data collected from Fire and Rescue NSW, there has been 12,488 residential fires in properties – including 40 deaths and 649 injuries confirmed at the scene. Of the 12,448 fires, 2791 properties didn't have a smoke alarm, or a smoke alarm that was operating.

How the Work, Health and Safety Act 2011 applied in the Miata Jibba case but was overlooked by the Coroner

(Information redacted)

Exclusion of bodily injury and property damage liability under agents PI Insurance

This particular issue has caused the insurance market to harden in recent times. We have seen premium rates escalate, insurers hesitant to negotiate new terms, the addition of further exclusions to the policies and some insurance companies leaving the market. An alarming trend that requires a strong response, particularly for property agent licensees in New South Wales, who are required to take out a policy for professional indemnity insurance as a condition of their licence.

According to one insider a situation where many risks will be considered uninsurable," The insider said. "There are many risks where the probability is high, the severity of a loss is very high, and they are becoming more and more frequent. Therefore, they become more and more uninsurable." As a result, more focus is being placed on the insurers internal procedures and risk management controls when considering renewing, or selling a new policy. Many insurers are now pushing back on risks that don't have adequate controls or systems in place, putting the onus on the insured to have procedures to mitigate their risk, rather than relying on insurance first and foremost. This will also require any distressed property agency to build a culture of compliance within the business, if they wish to remain insurable in the future.

Regulatory authority and limited powers

As it stands, SafeWork NSW enforcement powers are limited and somewhat troublesome. The Work Health and Safety Act 2011 doesn't capture properties that are used sparingly as workplaces - making it difficult for inspectors to impose on the spot fines where there are breaches of the act. To make matters worse, NSW Fair Trading have no enforcement powers to ensure properties are reasonably safe for people and workers to enter.

The issue and solutions to the smoke alarm crisis!!

The problem has always been to do with poor risk culture, weak systems and not having a safety officer to inspect the properties. Therefore, laws in relation to workplace safety management must be introduced (*with an annual audit conducted by businesses providing evidence to the regulator*) – instead of simply changing our smoke alarm laws every time someone DIES!!

We propose that either one (or both of the clauses) be drafted and introduced to the Property and Stock Agents Regulation 2014, that requires the following;

- *a Licensee at each place of business, is to ensure consistent document and record management controls of health and safety concerns, not excluding other properties under their control, are put in place*

- *a licensee must establish and monitor procedures, consistent with the Work Health and Safety Act 2011 – for any property that falls under the definition of a workplace for the time that a worker, or visitor is on site.*

Currently, NSW Fair Trading requires licensees' records in relation to the handling of trust money must be audited. Under the Property and Stock Agents Act 2002 and Conveyancers Licensing Act 2003, all licensees are required to lodge **a trust account auditor's report** if they received or held trust money during the audit period (yearly). Failure to lodge by the due date makes an individual or corporation a disqualified person under the Act and liable to disciplinary action.

I recommend that all licensees be required to lodge **a workplace/consumer safety auditor's report**, if they have sold or leased any properties during the audit period (yearly). Failure to lodge by the due date makes an individual or corporation a disqualified person under the Act and liable to disciplinary action. And much like the [RAB & DBP orders](#) that are issued by the Building Commissioner with [a public register](#). If we can organise a similar order issued by the Property Services Commissioner, this will protect consumers by preventing a building from being leased where there are serious defects and disclosing them to the consumer when buying/selling a home.

We believe that these important actions would benefit everyone in the community, and prevent other injuries and deaths in the future. It is also essential to rebuilding a safety culture within the property agent's sector - that is broken and, in many cases, non-existent. **(See list of case studies involving property safety at the end of this document)**

Kind Regards

Christopher Bretherton
Advocate for A Royal Commission into Real Estate Practices in Australia.

***list of case studies involving property safety**

[Five-year-old girl falls from second-floor window in Sydney's west](#)

[Lawyer wins \\$55,000 after suing landlords over mould](#)

[This house was too unhealthy to live in. But David did. Experts say many Australians are in similar](#)

[Case Study: Can someone sue a real estate agent for not disclosing a water problem](#)

[Tenant Sues Over Faulty Light](#)

[Warning Toddler Choked in blind cord tragedy](#)

[Single Mother of three pleads to a current affair for the Department of Public Housing to fix the black mould issue with her home](#)

[Property Manager Mauled Savage Dog Attack Central Coast NSW](#)

[These Renters Told The Real Estate Agents Their Light Wasn't Working. Now The Agents Have To Pay Over \\$300,000](#)

[Real Estate Agent Dies In Freak Accident Falling From Second-Storey Balcony](#)

[Real Estate Agent Kidnapped In Apparent Double Murder](#)

[Hamilton Couple Who Were Told To Move Out After Reporting Unsafe Asbestos Removal Offered New Lease](#)

[Aussie industry where bullying, assault and mental health issues are rife](#)

[Mum's heroic efforts to save girl from fire praised by coroner](#)

[54 -year-old woman receives \\$40,000 after falling through flooring of rental property](#)

[Australia: A Case Of A Balcony Collapse: Who Is To Blame?](#)

[Tenant sues over light fitting that gave severe electric shock](#)

[Sydney Tenant Sues Real Estate Agent](#)

[Death Of Baby In Niagara Park](#)

[Isabella's death sparks rental recommendation](#)

[Court ruling spells trouble for investors and rental agents](#)