Topic 1

Video

1. What did the Tribunal say in relation to obligations laid down by section 36(2A) of the Lawyers and [Conveyancers Act 2006](http://www.austlii.edu.au/au/legis/vic/consol_act/ca2006153/)?
2. Answer should relate to the following:

The Tribunal clarified that section 36(2A) of the Lawyers and [Conveyancers Act 2006](http://www.austlii.edu.au/au/legis/vic/consol_act/ca2006153/) prescribes the minimum supervision for the most competent agent, and that a branch manager must determine what level of supervision is actually required for each licensee. This possibly changing with each property.

1. What did the Tribunal say supervision must ‘be’ and ‘include’?
2. Answer should relate to the following:

‘Supervision must be actual, it must be tailored to the circumstances of the agent and the property being sold, it must involve active involvement by the branch manager with the agent(s), including a knowledge and understanding of the issues with each of the properties being sold by the agency, if any. It should include an assessment of the competence of an agent to draft an agreement in English.

3. Clause 19 in the sale and purchase agreement provided as follows: *‘The purchaser could open the fence for entry to back carport at purchaser cost up to owner agreed distance on the existing fence.’*

What did the CAC said was problematic about this clause that led to the salesperson licensees being found in breach of rule 6.4?

A.When finding the licensees in breach of Rule 6.4., the CAC was also concerned with the drafting of clause 19 concluding that it was: ‘Poorly drafted, did not make sense, had no legal effect, would not be binding on the vendor, and would not be binding on any subsequent owner of the rear property. In short, it simply does not achieve what the complainants’ wish which was in effect a right to use the vendor’s driveway to gain access to the carport.’

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4. Which Code of Conduct rules was the salesperson licensee found in breach of, and why?

A. Answer should relate to the following:

The CAC found the [salesperson licensee] did not exercise skill, care, and competence at all times, did not display a sound knowledge of the Act, regulations and rules, and offered the property for sale without an agency agreement so breaching rules 5.1, 5.2, and 9.6.

5. What changes in supervision practices did the agent licensee say had been made as a result of this complaint?

1. Answer should relate to the following:

Since the complaint, the salesperson licensee had had the privilege of placing advertising directly with media - to meet advertising deadlines - rescinded and is now required, without exception, to provide administration with all relevant, signed vendor authorisations before commencing any marketing whatsoever of a vendor’s property. He also confirmed that subsequent to the complaint, the salesperson licensee had undergone an in-depth training session with him covering interpretation and implementation of the rules and penalties for breaches of the rules from the Code of Conduct.

The agent licensee noted that ‘robust lines of communication’ were in place between himself and the salesperson licensee (based in different locations). Since the complaint he had placed further systems in place to ensure a much stricter monitoring of her activities as the agency’s representative at a different branch.

6. The CAC said that ‘checking systems’ in place at the agency when this situation arose were not thorough enough.

What should a ‘sound’ system have picked up on that would have meant the problem was identified earlier?

A. Answer should relate to the following:

The CAC noted [the salesperson licensee] had the right to place advertising for the property directly, rather than through the agency, at that time, but considered the agency’s checking systems were not thorough enough in this instance.

The CAC suggested that a sound system would cross reference advertising expenses received (it is expected invoices would have been sent to the agency over the several weeks of marketing) against a valid, signed agency agreement. This either did not happen, or the agency’s administration did not make [the salesperson licensee] aware of the discrepancy. The CAC noted the absence of a signed agency agreement remained undiscovered for just over three months.

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7. While the unsatisfactory conduct finding was dismissed against the complainant, what did the Tribunal say was ‘unacceptable’?

1. Answer should relate to the following:

The Tribunal agreed with the CAC that it was ‘unacceptable’ for the listing licensee to have not acknowledged the complaint, but that since the other findings had been dismissed this alone did not warrant a finding of unsatisfactory conduct.

8. What did the Tribunal say in relation to upholding the unsatisfactory conduct finding against the supervising agent?

1. Answer should relate to the following:

The Tribunal said: ‘We accept that for an experienced salesperson a lesser degree of supervision may be sufficient to meet the obligation under the Act and Rules. However, we find that the [CAC] was correct to find that [the supervising agent] failed to meet his obligation to supervise the licensee salesperson. Such supervision as there was, at any stage of the sale process and the subsequent complaint, was some distance away from what would have been sufficient, even for an experienced salesperson, and [the supervising agent] failed to respond to the complainant’s complaint in the appropriate manner.’

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9. To ensure the new salesperson licensee was properly supervised and managed, what arrangements did the CAC say the supervising agent and agency should have had in place?

A, Answer should relate to:

The Tribunal said that the new salesperson licensee should not have given advice to purchasers – there should have been arrangements for another appropriate licensee to do that.

The Tribunal considered that the supervising agent/agency should have ensured the new salesperson licensee was properly supervised, which included physically sitting with her when she was having the sale and purchase agreement signed and double checking that all important details were recorded on the agreement.

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10. Why was the salesperson licensee found to have breached rule 5.1?

1. Answer should relate to:

He did not provide advice in writing to the complainant on the unconsented stairs and placed the vendor at risk of the vendor warranty in the sale and purchase agreement being enforced.

11. What did the CAC say the supervising agent should have done?

1. Answer should relate to:

The CAC considered the supervising agent should have followed up verbal advice given to the purchaser in writing, obtained a written acknowledgement, and should have advised the vendor to consider including a suitable exclusion of acknowledgement in the sale and purchase agreement or alternatively advised the vendor to take advice from his lawyer about how to deal with the issue (or ensured the salesperson licensee had done so).

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12. Which parts of the complaint did the CAC decide warranted a finding of unsatisfactory conduct against the salesperson licensee?

A, Answer should relate to:

**(b) That the complainants told the licensed salesperson their lowest price was $440,000 but he wrote the sum of $340,000 on the agency agreement.**

The CAC said: We find that in failing to properly complete the listing agreement [the licensee] has breached Rule 5.1 (skill, care and competence) and that breach amounts to unsatisfactory conduct albeit at the lower end of the scale.

**(g) That the appraisal by [the salesperson licensee] did not take into account the proposed highway.**

The CAC did consider that [the licensee] has breached Rule 5.1 (skill, care and competence) in preparation of the appraisal and failing to retain a copy.

13. What issues with the supervision arrangement were identified that led to a finding of unsatisfactory conduct against the licensed agent?

1. Answer should relate to:

[The salesperson licensee] worked at office B. The [licensed agent] was asked for clarification as to who supervised [the salesperson licensee] at office B. His response was that he was the licensed agent and that day to day supervision of [the salesperson licensee] was provided by himself and licensee X, who was based at office B. Licensee X held a salesperson’s licence at the time.

As licensee X held a salesperson's licence, not an agent’s or branch manager’s licence, he was not qualified to carry out supervision. It was up to the agency, through [the agent licensee], to ensure that proper supervisory mechanisms were in place for [the salesperson licensee]. The CAC was of the view that they were not. The failure to properly supervise [the salesperson licensee] was a breach of section 50 and unsatisfactory conduct.

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14. Only a licensed agent or licensed branch manager may act as a supervisor in accordance with Section 50(1) of the Real Estate Agents Act 2008.

A. True

15. Under section 142 of the Act, it is an offence for a person to hold out ‘any person (including the person himself or herself)’ as an agent, branch manager or salesperson unless that person is licensed.

1. True

16. Responsibilities relating to supervision rest solely with the supervisor and not the salesperson licensee being supervised.

A. False

17. An effective supervision plan/agreement would clearly identify the supervisor and set out the roles, responsibilities and practical steps that the supervisor and salesperson will take to ensure the supervision arrangement is implemented.

1. True

18. New salespersons with less than six months’ real estate agency experience are prohibited from preparing sale and purchase agreements or advising clients or customers about their legal rights and obligations in relation to such contracts.

1. True

19. Give **four** examples of what a salesperson licensee should do if they are not getting the support they need from their supervision arrangements.

Answers could relate to the following, or similar, relevant points:

* Make sure you know which licensed agent or licensed branch manager is your designated supervisor. If you don’t know, make sure you ask! If your organisation uses a model where the person designated to be your supervisor is different to your line manager, or if your supervisor may change in different circumstances, make sure you are clear about these key relationships and who your supervisor is at any given time.
* For clarity, if you don’t have one, request a written supervision plan/agreement which clearly identifies your supervisor and sets out the roles, responsibilities and practical steps that you and the supervisor will take to ensure the supervision arrangement is implemented.
* If, for any reason, you feel that the arrangement in place is not providing you with the direction and control you need, talk to your supervisor!
* Agreements should be well-written, with clauses that suit their intended purpose and are clear, unambiguous, and easily understood. If you are unsure about drafting any agreement, you must seek help from your supervisor.
* When working in an area of real estate you are not familiar with, for example, in a complex transaction, make sure that you ask for additional direction and control throughout the process.
* If you have any concerns about the requirements of a client or customer involved in a particular transaction, make sure that you consult with your supervisor.
* Make sure that you obtain and understand all documentation relating to the transaction. Seek advice from your supervisor as needed.

20. Give **three** examples of how a salesperson licensee should take responsibility for their own training and professional development

Answers could relate to the following, or similar, relevant points:

* Make sure you attend all available training provided for you. This includes the 10 hours of compulsory verifiable continuing education, and other courses relevant to your role.
* Pick the topics that you select for your 10 hours of compulsory non-verifiable continuing education wisely. Think about areas of skill you need to improve and areas of knowledge that you can expand that are important to your role.
* Remember that if you are transferring to a different sector (a shift from/to residential, lifestyle, rural, commercial or business broking), you will need considerable training to meet the required minimum level of performance. Arrange this with your supervisor.
* You may also need additional training/support if you are working on a transaction in an unfamiliar geographical location, where previously unfamiliar issues, such as different property zoning rules or hazards, may apply.
* Whenever you anticipate or encounter a situation you are not sufficiently trained for, you should immediately ask for guidance from your supervising agent or branch manager. Such guidance may take the form of coaching, mentoring or training, or may require a more formal approach (for example, further formal academic study).

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