
REAA's proposed Supervision Standard

Summary of Additional Submissions & Analysis, Observations & Recommendations on Feedback

Phase 1A Report

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INTRODUCTION

The purpose of this report is to set out the general themes identified in respect of additional submissions made on the proposed Supervision Standard (“the standard”).

This report is intended to be read alongside the submissions made to the Authority. The report makes a range of observations about the feedback received, and identifies suggestions for improving the standard.

BACKGROUND

In accordance with its statutory functions, the Authority has proposed to set professional standards through the issuing of a standard on supervision.

The standard intends to introduce professional standards as a proactive form of regulatory intervention. The objective is to provide a benchmark for best practice to inform compliance advice, Complaints Assessment Committee and Real Estate Agents Disciplinary Tribunal decision-making, agency policies and procedures, and consumer expectations.

The standard has been developed considering relevant case law, existing informal guidance on the Authority’s website, and recurring consumer enquiries.

Following a first round of consultation a small number of changes were made to the draft standard to address perceived gaps and better clarify expectations, based on the feedback received.

Some of the changes to the standard include:

- confirming the acceptability of supervisors using experienced salespersons to assist with oversight of day-to-day activities of salespersons;
- clarifying the scope of application of the standard beyond just residential real estate agency work to include leasing and commercial transactions;
- setting a default expectation that all agreements are reviewed by a supervisor;
- clarifying that forms of remote supervision are acceptable, but setting an expectation that careful planning and contingencies are necessary;
- detailing the factors identified as being relevant to determining whether a supervisor can exercise sufficient direction and control over a salesperson;
- identifying practical measures that a supervisor should take when supervising new and/or inexperienced salespersons.

The Authority also took the opportunity to reword aspects of the standard to better clarify meaning, and made some formatting and presentation changes aimed at improving the readability and navigability of the document.

A second round of limited consultation was undertaken on the revised standard, that consultation round being the subject of this report.

CONSULTATION

A draft Supervision Standard was released for consultation in October 2016, with submissions closing in early December 2016.

Following that consultation process the standard was revised. The Authority decided that although the changes made were not of a substantive nature necessitating additional consultation, further limited consultation would occur to ensure the quality of the standard.

Previous submitters were invited to make further comment on the revised draft standard as a way of checking that the Authority had understood and addressed key matters raised in the previous round of feedback.

The Authority invited submitters to specifically comment on:

- whether the changes made to the proposed standard clarified any previous areas of concern or uncertainty;
- whether the changes made to the proposed standard created new uncertainty or areas of concern;
- whether submitters believed it is important that the Authority clarify the obligation for supervision if the holder of an agent's licence is employed as a salesperson;
- whether the formatting and presentation changes have improved the readability and navigability of the standard;
- whether the Authority had omitted anything significant from the standard.

Feedback was received from 20 submitters (individuals and organisations), including the Ministry of Justice and the Real Estate Institute of New Zealand. This represents just under one third of the total submitters who provided comment during the first round of consultation.

STRUCTURE OF THIS REPORT

This report first identifies some of the high-level observations about the feedback, before considering the key theme in further detail.

Details of the submitters are attached as **Appendix 1**.

The feedback received is reproduced in table form as **Appendix 2**.

KEY POINTS FROM SUBMISSIONS

The key feedback received:

- resulted in helpful feedback on areas where the standard may better clarify expectations;
- produced some suggestions about how aspects of the standard could be better expressed or formatted;
- indicates support for the current revision of the standard, endorsing the changes made to earlier draft;

- indicates pockets of concern about the principles-based approach to the standard, and the lack of prescription;
- revealed some support for setting out a clear maximum number (ratio) of salespersons a supervisor may supervise;
- shows remaining concern about circumstances where there is unavailability of supervisors, with the suggestion that the Authority's expectation to arrange 'cover' is unreasonable and/or unworkable;
- concern that too much responsibility is being placed on supervisors;
- [erroneous] concern that experienced salespersons will be unwilling to assist supervisors because it imposes responsibility on them;
- the need for definition of 'line manager'.

Much of the feedback around the above matters is clear and requires little further comment or analysis in this report. Brief comments and recommendations have been detailed alongside the submissions table in **Appendix B**.

The only significant recurring theme was around the lack of prescription in the standard, which is discussed below.

SUPPORT FOR REVISED STANDARD

Over half (11 of 20 submitters) of the feedback received can be interpreted as expressing strong support for the revised standard, suggesting the changes made were appropriate and better clarified expectations. A further 2 submitters generally supported the standard subject to clarification in specific areas.

Although some of the submitters in support went on to make suggestions about small improvements to the standard (such as editing or clarifying minor points), the Authority can draw the conclusion that there is a revised version of the standard.

Only 3 submitters made strong negative comments about the standard, suggesting that it was not going to achieve its objective.

PRINCIPLE-BASED vs PRESCRIPTION

The most substantive feedback received related to concerns about the lack of prescription in the standard. There were 3 submitters, including REINZ, who were highly critical of the standard, indicating that it offers nothing above and beyond the Act and rule requirements.

The general theme of the submitters' feedback was the standard ought to provide clearer and firmer expectations that do not permit interpretation or discretion.

One submitter suggested that the standard should be consistent with a specific previous CAC decision, and that previous correspondence from REAA setting out expectations around supervision should be reflected in the standard.

For the most part the standard identifies principles to guide supervision. However, it does contain a small number of expectations that are expressed as instructions. Whether the standard has struck the right balance, or should adopt this model at all, may warrant further consideration.

The response to the feedback received is, however, relatively straightforward. While the desire for more prescription is natural, it is ultimately impractical. The standard will apply to a range of people as well as organisations of varied sizes, structures, and in various locations. The standard must therefore take account of, and allow for, all manner of variables. To that end, it must ultimately be flexible; the underlying message being that supervision must be tailored to each case.

It would be unworkable and impractical to have a standard that expressed detailed and prescriptive rules for undertaking supervision. The standard does not, and cannot, contemplate every possible situation or variable that might be relevant to determining how supervision should be carried out.

The standard does more than simply restate the obligation under section 50 of the Act (as well as the relevant rules). The standard articulates the various components to supervision, and identifies the matters that supervisors, and salespersons under supervision, must turn their minds to when establishing and executing supervision arrangements.

The standard sets out to explain the ‘what’ – what the supervision arrangement should incorporate (whether it is provision for remote supervision, or anticipating how things will work when the supervisor is unavailable). In addition, it explains the ‘how’ – how the supervision arrangement works in practice is for the supervisor to determine in the context of the salesperson being supervised, taking account of all their specific circumstances and any other relevant variables.

Developing templates or additional guidance material may be helpful in addressing some concerns in this space. That is, any template or guidance that identifies the various matters that the Authority would expect to see in such a document may help to supplement operationalisation of the standard in industry.

As CAC and Tribunal decisions develop, the Authority will also be able to provide further guidance on acceptable means of compliance in certain contexts.

OBSERVATIONS

Based on my review and analysis of the feedback I make the following observations:

- the standard is fit for purpose, and despite the desire for more prescription it strikes the right balance between guiding and setting a small number of essentially non-negotiable expectations (such as having a clearly designated supervisor);
- the standard would benefit from being supported by additional messaging, compliance advice and/or practice notes, but these should follow issuance of the Standard and as CAC and Tribunal decisions develop;
- development of templates (such as a supervision agreement and/or record-keeping policies) should be considered as a way of addressing some of the concerns around perceived 'gaps' or lack of clear guidance that were expressed;
- the lack of concern expressed about remote supervision was somewhat surprising, and suggests that the clarification provided in the revised standard may have addressed the perceptions around that issue;
- there does not appear to be any significant misunderstanding or unintended consequence arising from the changes made to the original draft standard.

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Original draft: 14 April 2017

Revised draft: 3 May 2017

APPENDIX 1 – SUBMITTER DETAILS

Submitter details removed for publication

APPENDIX 2 - SUBMISSIONS

Where a submitter addressed multiple points in their submission, the individual points have been identified as separate lines in the feedback table for ease of reference.

All submissions are reproduced exactly as is. No corrections of typos or other editing errors have been made.

	Submission
AC1	a) The green boxes contain a summary of the paragraph they relate to, just to check carefully to ensure that there is no possible conflict between the paraphrase in the green box and the text.
AC1	b) At paras 13 and 14, they boxes are oddly placed. It's suggested that the first box in 14 should come immediately after para 13. Also there are a couple of boxes in para 14 that appear in the middle of sentences, making the actual text hard to read. (This may already have up that has already been fixed).
AC2	It is well put together. Two comments:
AC2	I think a guide to the maximum number of salespersons being supervised by an individual be given.
AC2	If the supervisor is absent/away or not available – what happens if there is no other qualified supervisor in the office? (This also effects comment No. 1)
AC3	Thank you for the opportunity to review the latest draft Standard regarding supervision. I appreciate that it is principles based and not prescriptive. On this basis, the current draft is adequate to provide guidance and bench-marking for best practice. My concern, that is outside the parameters of this supervision standards draft, it that we have a time based definition for 'new salesperson' rather than a performance based. Ultimately, my concern is with the Real Estate Salesperson qualification itself.
AC4	I feel you have covered most situations on paper, but i would like to see a return to a qualified branch manager or agent in each office as it seems a difficult if not a impossible job to supervise salespeople to the extent that is required by the ACT. We are again be acting as a ambulance at the bottom of the cliff. Plenty of penalties to apply after the event. I can see this as a win win situation for the industry. More direct supervision, more qualified staff ie branch managers, meaning more higher qualified staff in the industry leading to less complaints. The only downside is the cost in the eyes of owners of the business but i believe this would lead the a better standard as we would have less offices, no need to have lots on bums on seats, which would lead to less below average salespeople in my view in offices leading to less complaints and dissatisfaction from the public
AC5	These proposed revisions all look good to me.
AC6	Firstly, well done I think this document is far clearer than the first draft and it reads very well. In answer to your questions
AC6	Any previous areas of concern or uncertainty – are these clearer now? Yes definitely, clearer and more detailed.

AC6	Where a licensee holds an agent's licence but works as a salesperson, what supervision is required? I am not 100% sure what you are meaning here. Do you mean does the agent need to have supervision, or do you mean that because the agent is also working as a salesperson, that they need to have other salespeople assisted by a Manager?
AC6	Are there any significant omissions? No I think it is looking great.
AC7	This reads well & I think very clear.
AC7	I am a Licensee and I do sell which I see as a asset as I can see where salespeople are coming from and they can really relate to this, we have a great team environment and work well together plus problem solve together. I think this is a big asset for me. Selling Licensee is more hands on and I can motivate our team well.
AC7	24. Half of my team is Chinese, they follow the rules and I feel they like to be well supervised. Some other cultures I have experienced do like taking short cuts, I have many ways to deal with this, not giving someone full access to the system etc so everything has to come through Admin. This has been an experience I have had in the past but now everyone is clear if you work for us the rules are clear.
AC7	I also think 27. is common sense, I don't care if an experienced salesperson I want to see what they are doing, contracts etc and if you promote this attitude people will come to you automatically for advise or just to show you what they are working on.
AC7	Last of all Remote supervision, I have just been in China for a week. It was interesting to see that nothing changed, I had the same amount of phone calls, text, WeChat, Skype as though I was in the office and if anything I new more of what was going on, I checked all contracts by email and WeCat. Apps like WeChat are encouraged in our office so the team use it all the time to communicate.
AC7	39. With record keeping I keep a supervision spread sheet open on my desktop every day on every team member so I think all of the supervision standard reads really well.
AC8	I am no longer in the day to day employ of Property Brokers.
AC8	I have copied Bill Highet into this mail and he will ensure that the right person provides commentary on your revised standards.
AC9	Thank you for the opportunity to review the second draft of the professional standard. We've focused on the changes that have been made since the previous version, for which we had no specific comment.
AC9	The main comment we have relates to the guidance around an experienced salesperson assisting with day-to-day supervision. We just want to confirm if the REAA is comfortable and confident that this guidance is consistent with section 50 of the Real Estate Agents Act 2008. While I note at paragraph 15 it emphasises that the designated supervisor will ultimately be responsible for supervision (and oversight), some of the wording used may potentially be confusing as to what is required of each role. For example, "delegating to assist with oversight" versus "assisting with oversight". It may be worth clarifying to ensure this guidance isn't interpreted as "delegating oversight" as, in light of section 50, this would be inappropriate.
AC9	The other comment just related to format. The text boxes to note important information are useful. However, I note at paragraph 14, the text boxes interrupt the flow of the paragraph. This is possibly an error as the first text box links with paragraph 13. The second text box should be at the end of paragraph 14. I also note that the first text box under paragraph 14, states "clearly defined designated supervisor" while the text in paragraph 13 states "clearly designated supervisor", not sure which is intended.
AC9	I have studied the proposed Draft for "Professional Standard on Supervision" and wish to make the following comments, Firstly, it is going a long way to clarify the whole question of Supervision,

AC9	With regard to clauses 15 and 16 this is certainly a move in the right direction but do have some concern as to the definition of an "Experienced and Competent" Salesperson. Should this be "Tagged" to similar experience as is to an Agent or Branch manager, for example Minimum of Three years Experience or something similar? If not I can envisage the system being "Abused".
AC9	Thank you for the opportunity to forward my thoughts to you and look forward to the final paper'.
AC10	I appreciate your request and I have read the document --- Second consultation - Supervision Standard DRAFT 270317, It looks good to me. Comprehensive but not too specific, leaving room for common sense. I have one suggestion - At item 21 there are 5 specified points a supervisor must be actively involved in I suggest adding one more. Review of Weekly Vendor Reports. It important that this information, on which the vendor is bases their decisions, is thorough and accurate. And for the supervisor this should be the best review of a sales campaign.
AC11	I have tried to keep this email as short as possible and it is not, sorry about that. I appreciate the opportunity to add comment on this document. If we are to have a Standard set though I would much prefer to have very clear guidelines of the expectations of REAA for us all to follow. Not so open ended and subject to interpretation in different ways by different folk.
AC12	Gordon has shared his email regarding this with me and I agree with so much he has said I also comment/query as below. I am very concerned about the Supervision Standard as it seems it will be a very grey area and able to be varied to easily based on REAA intpretation of the supervision of the office etc and we are not being provided with the the clear instructions on what is expected.
AC12	This paper has 11 pages says 'all salespeople must be properly supervised and managed' – which we already know – but the document is fuzzy, lacks specifitcity and feels unhelpful. I am aware that I am ultimately responsible for my team but this document changes nothing, encourages even more expense and time consuming micromanagement and diverts us from our focus on marketing and selling businesses.
AC12	I strive to train and oversee in a supervisory role to a very premium level. I am disappointed though that my day is now always looking for the potential possible problems in everything that we do (to the extreme) as opposed to the joy in what we have done for so many years. I have found that I have developed a bit of a negative attitude with my team in that when they come in with a success I am looking for what might be wrong instead of celebrating the success. I have been involved in business sales for over 22 years and have always loved business sales and the clients and customers we meet and the successes we have. The costs now for running our business on the regulatory side have become quite excessive. We are not a large company and it is now feeling as though we are needing to consider having an in-house solicitor position created, hoping it does not come to this. We sell businesses. We are not legal practitioners.
	I support REAA and I am definiety an advocate for doing things the right way. I am of the firm opinion that there are expectations and requirements and with just reason also for companies and supervisors to have in place systems and processes, training and support and careful monitoring of appraisals, agency agreements, Sale and Purchase agreements and teaching their salespeople and support staff of the issues to be mindful of etc regarding the types of businesses they sell and keep them up to date with law requirements etc. BUT I become more and more wary of the increased pressure placed on supervisors to be accountable for all that a licensee salesperson under their supervision says and does. We need to keep the responsibility with the licensee and set clearer guidelines on the expectations by REAA of what a supervisor and the company should provide and maintain in order for licensees to abide by the rules of The Act and to show that supervision is well attended to. However, training inhouse and industry specific from REAA is where our focus should be. I believe if this were taken into account more seriously from the REAA perspective we would see more Verifiable Training suited to business brokers rather than so residentially focused. Business brokers need attention in verifiable learning to suit their market.

AC12	I see weakness in the document in that interpretation may vary on a case by case basis depending on the CAC opinion etc, we need clear defining of expectations, templates of what to follow etc for the supervisors.
AC12	My comments on some of the clauses on the draft follow below are in red'
AC12	4. The Standard is concerned with <u>all salespersons</u> , whether they are employees or contractors, and <u>regardless of their level of experience</u> . All salespersons – a salesperson could be an Agent in their own right and highly experienced – seems there could be a lesser degree of supervision required of a salesperson of this category and if so and that salesperson makes a mistake will the supervisor be penalised as they gave a lesser degree of supervision? We would have stronger expectations of an experienced salesperson to do things well.
AC12	5. The Standard is <u>principle based</u> . That is, it does <u>not prescribe specific requirements or steps to be followed</u> . Rather, it <u>outlines general objectives to be achieved</u> . Licensees are expected to use and apply the Standard in the context of their own circumstances when first establishing a supervision arrangement and then on an ongoing basis as a salesperson's experience and competence increases. Does that mean lesser supervision expected to be provided to more experienced salesperson? If in the absence of REAA providing us with more detail on the expectations of what we should be doing are we are expected to set our own requirements and steps we consider best practice to follow around this, if so, then one would think REAA may be in a position to check our process steps established prior to a potential problem and advise us if they are suitable. Too much grey area around this I feel. Alternatively perhaps REINZ could work to develop this for members and have REAA check and advise are these process steps – best practice etc suitable for licensees to follow. If we all know what the expectations are we can then implement them.
	6 The Standard does not create any binding rules of law that are directly enforceable against licensees. However, it will be used by REAA in respect of its compliance and enforcement decision-making. It is anticipated that Complaints Assessment Committees and the Real Estate Agents Disciplinary Tribunal will also have regard to the Standard when considering matters that raise supervision issues. But Agents and licensees need to know what the REAA will base their decisions on to be able to ensure they can comply with setting in place the right acceptable supervision. Too vague here.
	11 A salesperson's line manager may also be their supervisor, or they may have a separate supervisor and line manager. Whatever the situation, it is important that all parties are clear that supervision under the Act is not the same as management of an employment relationship. For example, responsibility for ensuring that all salespersons working at the agency have a current licence, understand their statutory obligations, and meet their continuing legal education requirements are responsibilities that properly rest with a manager rather than the salesperson's supervisor (see Rule 8.4). Only a licensed agent or branch manager may be a supervisor. Please explain this better – Line manager is what?
AC12	14 A written supervision plan/agreement is an effective means of ensuring a salesperson is aware of who their supervisor is and how supervision will operate. A written supervision plan/agreement is desirable. An effective supervision plan/agreement would (a) clearly identify the supervisor, and (b) set out the roles, responsibilities and practical steps that the supervisor and salesperson will take to ensure the supervision arrangement is implemented. A plan/agreement can also be used to ensure that the form and method(s) of supervision is clear to the supervisor, salesperson and any separate line manager. Such a document may be part of, or separate to, any employment agreement or contractual arrangement in place between the salesperson and the agent or agency. Is not the Company Policies and Procedures manual the same thing? – If this is to be a requirement of REAA to have something more specific around the responsibilities and requirements of supervision then I firmly believe REAA should provide the template of what they consider is mandatory for a supervisor to provide to and expect back from salespersons? OR maybe it is possible for REAA to work with REINZ as mentioned above earlier to agree what this should be.

AC12	15 Ultimate responsibility for supervision remains with the designated supervisor even if they delegate an experienced and competent salesperson to assist with the oversight of day-to-day activities of the salesperson under supervision. This feels a dangerous statement to me. So in other words it would be very dangerous to have an experienced salesperson assist anyone as they may make a mistake and that will sit on the shoulders of the supervisor.
AC12	16 A supervisor may put temporary supervision arrangements in place in the event they are unavailable, but only a licensed branch manager or agent may undertake the supervision. And yet we are allowed as per Number 15 we can appoint experienced and competent salesperson to assist but cannot do so in the event of the supervisor being unwell etc - How is it anticipated a small office will comply with this? A small office with say 6-8 licensees and one licensee with Agent license – and that person is sick for the day, where do they find a relief person from for that day of sickness? - Does that mean small offices will need to be a thing of the past? 15 above is allowing an experienced salesperson to assist but not allowing if supervisor is sick?
AC12	20 Supervisors are not expected to sight and direct every aspect of a salesperson’s real estate agency work. However, a supervisor should be actively and regularly involved with a salespersons activity. Ultimately, what is required is an exercise of judgement as to the nature and degree of supervision that is appropriate in each case, to ensure effective supervision. The nature and degree of supervision will vary from salesperson to salesperson; based on their experience, competence and wider operating conditions. OK - but how is supervisor penalised by REAA decision makers if a very experienced salesperson makes an error that they should not have made and they were not under as vigilant supervision as they were so experienced, this is debatable rationale.
AC12	21 The supervisor must be actively involved with the salesperson, which means:a. understanding the level of experience and skill of the salesperson, and placing conditions and/or restrictions on their real estate work as appropriate; b. understanding the issues with each of the properties being listed and sold; This is very impracticable. If you have 18 salespersons and you are listing 40-50 businesses a month, it is highly unlikely the supervisor will know what the issues of each business are, the supervisor trains and oversees the salespersons and ensures they understand the issues to look out for etc, but know every business, this is most unreasonable to expect.
AC12	25 Every agreement should be reviewed by the supervisor. The timing and degree of review required in each case is a judgement call for the supervisor to make. Supervisors must be actively involved in agreements drafted by inexperienced salespersons or those not maintaining a consistently high standard of drafting. This includes reviewing agreements before the parties sign them. Yes fine – but this process is also needing follow through throughout negotiation process, changes get made along the way and this should be factored into this requirement also.
AC12	29 When the supervisor is satisfied the salesperson is conducting real estate agency work in a competent and legally compliant manner, they may adjust how they supervise the salesperson to a way that reflects supervision of a more experienced and competent salesperson. This is unclear as to how supervision may ease a bit please explain.
AC12	32 Whether the supervisor can exercise sufficient direction and control will depend on: a. the experience of both the salesperson and supervisor; b. the availability of experienced salespeople to assist with the oversight of day-to-day activities; Need better understanding of this
AC12	c. whether the supervisor manages their own listings; Please explain? Does that mean if a supervisor is working businesses/properties they are not supervising others well enough?
AC12	d. how many other salespersons the supervisor is responsible for; What is the criteria recommended as acceptable supervisor ratio to team size? I realise will depend on systems in place etc – but what is the guideline here if this is considered? – I see this covered further down, but feel we still should have some form of what is acceptable on REAA standpoint.

AC12	<p>38 There is no set ratio or maximum number of salespersons that a supervisor may supervise. However, supervisors should consider the matters identified in paragraph 21 of the Standard (about conducting active supervision), paragraph 28 (about new and inexperienced salespersons) and paragraph 32 (about exercising sufficient direction and control) and exercise their own judgment about whether they are capable of supervising multiple salespersons, and if so, how many salespersons they can appropriately and effectively supervise and manage at any one time. Supervisors can supervise multiple salespersons. How many will depend on the supervisor's capacity and capability and take account of the level of experience and competence of each salesperson being/to be supervised. It would not matter how capable a supervisor is in managing a team of say 18 salespeople and having great systems etc all in place an experienced salesperson may still do something out of order, and would it be fair to penalise the supervisor because they had 18 salespeople to supervise, I think not, no matter how well we supervise there will always be the room for error and this applies to every industry not just ours.</p>
AC12	<p>39 It is recommended that supervisors keep supervision records in addition to any supervision plan or agreement that may be used. The form and extent of record keeping should reflect the nature of the supervision (for example, supervision of a new salesperson might be expected to require a greater level of record keeping than might be involved for an experienced salesperson). My day is spent nowadays only attending to checking appraisals, listings, S&P agreements, training and just being available 24/7 to my team as a supervisor. I have no time anymore for creative or other stuff and growing the business etc, it feels so compliant focused and so nerve wracking and that I am responsible for every little thing every employee or salesperson says or does. Are we developing a culture where salespersons do not have to worry too much how or what they do as the buck stops with the supervisor? The nature of our business involves our salespeople meeting clients and customers without a supervisor alongside them, it is very difficult to monitor all they say and do. I track so much already with a very diligent attitude and try very hard to retain all comments etc, it is very hard to do so, it does feel it gets more extreme daily with all of this, I do believe more responsibility should sit with the licensee – salesperson and supervisory control needs to be there but please don't scare off intelligent, professional and experienced people from joining or staying in our industry and taking on the supervision role, it is becoming a dangerous position to hold. I personally do uphold maintaining the best possible standards that we can, we are very strict on our team but at the end of the day we are only human too. We are professionals, we aim to do the best we can for our clients and customers and we are not looking for shortcuts, we wish to be highly professional, and overall I think for the number of transactions we do as an industry, we are doing a good job.</p>
AC12	<p>40 Where REAA receives a complaint about a salesperson, the adequacy of supervision will be considered. If supervision is, or appears to be, an issue, the supervisor will be provided an opportunity to demonstrate show how they have complied with this Standard. Contemporaneous supervision records are important to demonstrating compliance. If the supervisor is not able to produce records or otherwise demonstrate they have complied with this Standard this will be relevant to REAA's compliance and enforcement decision-making. If we are to produce records then please provide templates or guidelines on which and what records we must keep in order to be viewed as providing the correct supervision. In fairness to us we deserve to know what is expected rather than a vague overview – this is our business – our livelihood and if a complaint is lodged against any of us it is a huge drain on our resources and time and we would like to feel we have systems in place that hold us in good standing to deal with any possible complaint should it arise. I do think if there is a Standard to be written it needs to be more specific and it may also need to be more industry sector focused also – we sell businesses not houses what should our particular best practice to follow be etc....</p>

AC13	Many thanks for the opportunity to make further submissions on the proposed Professional Standard on Supervision. Whilst I fully understand the need to set some standards they should be workable and practical in the real workplace. Compliance is now a huge cost on small businesses and many regulators don't appreciate that not all agencies are of sufficient size where they can employ full time professional staff to "ensure" adherence. We need to be careful that small business is not forced out of the industry because of compliance issues. The more boutique operations are generally beneficial to the consumer providing more tailored service to meet the special requirements and providing an alternative to the big name "machines".
AC13	However, there are a few serious flaws with the proposed Standard in that it proposes to be a general guidance but then sets out a number of specifics.
AC13	I am absolutely certain that almost every complaint against a licensee could well be attributed to inadequate supervision under the proposed standards and it will not be long before CAC and Tribunal decisions set precedent to reinforce my contention. Therefore the document needs to be absolutely specific on the full nature of the supervisory role or go back to being very general – at the moment it seems to be in between. This will cause problems.
AC13	On the point of there being a clearly defined supervisor – why is this necessary. In small operations it is often common for this role to be shared on a day to day basis and I suspect the larger firms may have specialists in particular areas who oversee the licensees. I suspect the only reason such a provision has been included is to give a direct focus on who to target if things go wrong. The most important goal should be facilitating and allowing the best supervision possible.
AC13	It says that "A written supervision plan/agreement is desirable" - I think that it should be compulsory but REAA should provide templates so we can get an understanding of what is expected. You might argue that you don't know what you should put in it but we are left with the same quandary. Fuzzy regulation never works and this is a very fuzzy document which will lead to some unfortunate outcomes. CAC's have shown, through their decisions, inconsistent lines of thought but here they will have the ability to penalise any supervisor they so desire.
AC13	It is not possible or practical to have full supervision of licensees whether they be onsite or remote. The focus should only be on the advancing of professional standards of all industry participants. No matter how well supervised a licensee is, he or she will always advance themselves in a way they have been trained – not supervised. It seems to me that the document will result in no one wanting to be a supervisor because of the inherent risks. This will not serve the industry as supervision and management are important.
AC13	I'm not sure that the Standards are correctly founded – rather than setting down fuzzy rules maybe REAA should be looking to train/educate supervisors on what you might expect from us – the current document does not enlighten us at all – it simply scares the hell out of us because we know how it will be interpreted when problem arise.
AC13	If you want a written plan or agreement simply say so and tell us it should be attached to every salesperson agreement – but provide us guidance/templates which we can fine tune and modify.
AC13	In small firms there may not be a second agent or branch manager and this could pose problems when he or she is absent. Does the firm have to close down if the agent is off sick for a week? Stand in agents or branch managers can be impossible to find. Please allow a little latitude around this issue as only the large firms could comply.

AC13	No. 20 states that supervisors are not expected to sight and direct every aspect of a licensee's work – but it gets fuzzy where judgement is called upon as to how much time is deemed to be effective.
AC13	No. 21 states that the supervisor must understand the issues with each property being listed and sold – this is not possible and places a responsibility on the supervisor that cannot reasonably be met. It goes on further to say the supervisor must ask questions to draw out matters of concern. This is a pointless requirement as often the licensee does not know, and the vendor has no obligation under law to acknowledge, defects or other matters that detrimentally affect value. The licensee is the one who is trained to identify obvious problems but the supervisor may never even see the property or business so how is he/she supposed to know, or suspect defects, or conduct a line of questioning which may reveal issues. These are both unreasonable requirements of a supervisor.
AC13	No. 23 it says that the supervisor should be alert to identifying potential problems rather than waiting for a salesperson to identify them. This is impossible to comply with as the supervisor, unless micro managing every licensee.
AC13	No. 37 the requirement that communication be as effective as face to face is not necessary. We don't need to see each other's faces – we talk, we write we talk again. The use of Skype is well gone. We stopped doing this years ago as it required too much planning around suitable times. In the world of agency things move very fast and people want and demand answers immediately which can only be handled by phone, text, email and the like. Skype was never liked in business as it is not like talking to your grandmother in another city – we are business people. In the real world many businesses have moved away from teleconferencing so why force agency business down a route that is becoming outdated and ineffective.
AC13	No. 39 I agree that keeping notes is ideal but should not be prescribed. I have already covered the cost of compliance on business and the additional time recording details/facts that most likely will never be called upon seems not to make sense. Commercially this is not possible and most supervisors will have to assess which are important events to note and which are not. The Standard should not expect anything more.
AC13	However in closing I must say that this document will cause considerable problems in the industry, has not been well thought out, is impossible to interpret in any meaningful way, will lead to a shrinking industry because no one will want the responsibility of being a supervisor, costs to consumers will go up with less competition, actual delivery of service will reduce considerably due to the time allocated to further compliance, and the CAC's will have a field day making findings against a large number of supervisors for actions undertaken by licensees. In real life only one person makes a mistake or error in judgement but REAA are looking for two culprits for each event. So this document should be one page or 300 pages – the current proposed document is unworkable in my opinion.
AC14	Thank you for the opportunity to provide more detailed feedback. Our concerns are based on the lack of clarity in the second consultation proposals for a Professional Supervision Standard and the absence of any specific guidelines, when compared with the detailed criteria set out by CAC403 - C05600 (REAA letter 24th September 2016) and the instructions that those criteria were to be implemented and embedded in the Agency. I have attached both a copy of the CAC 24 September 2016 letter and the subsequent Agency Best Practice that we incorporated into our business to meet such requirements of the CAC. Our thoughts are that if Supervision Standards, having been reviewed and set out by a CAC, and applied to one real estate agency, then it would follow that the Authority should apply those established standards on an industry wide basis.

AC14	The REAA have forwarded a second document in the form of a draft "Professional Standard on Supervision" for comment and feedback by 10th April 2017. The Standard sets out the Authority's guidance and benchmarking for best practice in the supervision of salespersons. It makes it clear however that the Standard is limited to principle based [1] . "That is, it does not prescribe specific requirements or steps to be followed. Rather, it outlines general objectives to be achieved. Licensees [branch managers; agents] are expected to use and apply the Standard in the context of their own circumstances when first establishing a supervision arrangement and then on an on-going basis as a salesperson's experience and competence increases". The only parts of the draft Standard that specify a particular action are at paragraph 21.c. [2] ,conducting regular meetings, and paragraph 25 [3] which requires every sale and purchase agreement to be reviewed by the supervisor but with the timing and degree of review in each case as a judgement call.
AC14	In our view this Standard is disappointing and if its intention is to achieve a standardised level of compliance across the industry then it is poorly crafted and fails to meet that aim.
AC14	It provides the industry with no greater clarification as to supervision expectations than the current Rule [4] or the Act [5]
AC14	Nor does it reflect the management and supervision criteria determined by C05600 and the resultant REAA audit outcome of our Otahuhu Branch [6] . That CAC determination does provide clarity and does provide practical guidance. It would seem from our review that this draft Standard has elected not to recognise the validity of the CAC determination, or that it does not see the CAC outcomes as relevant.
AC14	Notwithstanding its failure to provide clarity, it does require [7] a salesperson to have a clearly designated supervisor. That supervisor to be an agent or branch manager with sufficient skill and experience to provide effective supervision to the salespersons they are responsible for supervising. There is comment that while it is acceptable for experienced salespeople to assist [8] it makes it clear [9] that the ultimate responsibility for supervision sits with the branch manager or agent.
AC14	The Standard further requires [10] that a written plan/agreement is desirable. It says that an effective plan/agreement would (a) clearly identify the supervisor, and (b) set out the roles, responsibilities and practical steps that the supervisor and salesperson will take to ensure the supervision arrangement is implemented. A plan/agreement can also be used to ensure that the form and method(s) of supervision is clear to the supervisor, salesperson and any separate line manager (undefined but I assume that would mean sales manager). Such a document may be part of, or separate to, any employment agreement or contractual arrangement in place between the salesperson and the agency.
AC14	The Standard also addresses the management and supervision of new and inexperienced salespeople. Again, that commentary provides no greater or more detailed guidance than is already established in the current REAA New Salespersons Information Sheet [11] .
AC14	The Standard does address salespeople who work at a different location to their supervisor [12] . But again is inadequate in the provision of concise comment apart from re-stating that a salesperson must be properly supervised and giving a warning that exercising sufficient direction and control for remote located salespeople can require careful planning and systems and that it presents significant practical challenges.
AC14	Putting aside the shortfalls of the Standard, as an agency we are now in the position of meeting its overall intention – that is to be able to demonstrate that agency work carried out by our licensees is properly managed and supervised.

AC14	We have implemented our own Management & Supervision Branch Manager Best Practice Standard [13] (the written plan required by the Standard) and that best practice together with the salesperson contract for services acknowledgement [14] (the agreement required by the Standard) means we are well placed should we ever be tested on aspects of our management and supervision [15] .
AC14	To summarise we believe that the draft Standard:
AC14	· Does little to provide direction to the industry other than to repeat what already exists in the Rules and the Act.
AC14	· Does not reflect the outcome or expectations of CAC C05600, and
AC14	· Gives neither the industry nor the public a level of comfort as to the additional level of requirement for the way in which remote salespeople are managed.
AC14	Our concerns are based on the lack of clarity in the second consultation proposals for a Professional Supervision Standard and the absence of any specific guidelines, when compared with the detailed criteria set out by CAC403 - C05600 (REAA letter 24th September 2016) and the instructions that those criteria were to be implemented and embedded in the Agency.
AC14	I have attached both a copy of the CAC 24 September 2016 letter and the subsequent Agency Best Practice that we incorporated into our business to meet such requirements of the CAC.
AC14	Our thoughts are that if Supervision Standards, having been reviewed and set out by a CAC, and applied to one real estate agency, then it would follow that the Authority should apply those established standards on an industry wide basis.
AC15	I have reviewed the revised draft and on balance I believe it fair and appropriate.
AC15	It is extremely difficult to define 'supervision' given the nature of the industry, different experience and background of people involved, individual agency dynamics (part of a group, independent etc), size of agencies, types of property etc.
AC15	The highlighted statements under certain clauses provide a great guide and in some cases a definition.
AC15	Until it is 'tested' by the industry (once approved) and/or REAA complaints, the revised supervision standard sets a benchmark to work from.
AC16	Last email I hope. I note a typo in footnote 5 on page 8: <i>5 For the purposes of this Standard, 'inexperienced salesperson' means any salesperson (including new a new salesperson) with limited experience in real estate agency work, or aspects of certain real estate agency work.</i>
AC16	In paragraph 34, line 2, would you consider changing the expression 'at distance' to 'at a distance', which is more commonly used in a generic sense?
AC16	I understand that Debbie Kinsella has already drawn your attention to the opening introduction (see extract below) to the document where reference to Section 50 (1) of the Act refers to the Lawyers and Conveyancers Act 2006. Debbie has gone on leave. I have been unable to confirm that she has advised you so thought I would follow up anyway. Introduction - 1. The Real Estate Agents Act 2008 (the Act) and the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012 ("the Code of Professional Conduct and Client Care") include several important obligations relating to supervision. Section 50(1) of the Lawyers and Conveyancers Act 2006 the Act provides that a salesperson must be "properly supervised and managed" by an agent or branch manager ("the supervisor") when carrying out agency work.

AC17	I do agree that experienced salespeople can assist with the day to day supervision as they often have a good understanding of good real estate practices and conduct, provided they meet regularly with their supervisor for discussion on what assistance they have been providing and giving examples.
AC17	All agreements should be reviewed by the supervisor before they are presented to clients.
AC17	I agree that there will be a need for remote supervision in some instance with a balanced plan in place to ensure that effective supervision takes place. With internet, skype etc. together with planned visits make the possible and feasible.
AC17	I also agree that while supervision guidelines are a good thing there cannot be one specific hard fast rule for the different types of offices around the country that exist.
AC18	Comments in response: The second draft document is an excellent well balanced document with expectations well communicated. A well managed agency will take the matters raised seriously and will easily respond to the recommendations made through the upgrading of their policy and procedures. A less disciplined agency will in my opinion, readily identify with the "Lack of Urgency" evident in the documents use of words. I am concerned that the document lacks defining words such as ,require ,ensure, undertake etc.
AC18	While I realise the prescriptive intent of this standard,I have no doubt that some agencies will take advantage of the less than prescriptive approach and push their "status quo" envelope..... until they are confronted with the NEED to comply. I am a little concerned and disappointed that it has taken until the very last sentence of the document ... e. g. clause 40... to push home the seriousness of this standard i.e." If the supervisor is not able to produce records or otherwise demonstrate compliance with this standard" that this will have relevance to REAA compliance and enforcement decision making . Earlier use of this language is missing in the document.
AC18	So...just as it will be my job to ensure each of my agency offices comply with this new standard.....will the REAA Supervise in its own right.?? i.e. Put in processes to Ensure compliance by agencies.??
AC18	Licensee with Agents Licence: Where a licensee who holds an agents licence is working as a salesperson then that licensee is expected to demonstrate a high level of proficiency and professionalism as a salesperson and be an example to the rest of his/her sales team. As a "team member" a licensee agent electing to be in a selling role should comply in all respects and not be singled out to receive less supervision.(In reality they may) but that will be for each company to decide.There is no need for licensees in this category to be identified or receive any clarification in any Supervision standard documentation. All salespersons in selling roles must comply (in spite of rank)
AC18	Point for clarification: I would like to see the REAA provide either as part of its suite of training documentation, or on the standard document itself... a clear expectation of the lead in or final execution date ,for all agencies to have their policies and procedures in place .
AC18	Many thanks and great work on this for our Industry.
AC16	I am of the opinion that the document provides effective guidelines, not only for licensed supervisors but also for licensed salespeople, and their expectations of being properly supervised. Also who is identified as the appropriate qualified person the salespeople need to consult with for assistance on compliance matters.

AC16	I am left with one concern. I note that it is confirmed as <i>“acceptable for experienced salespeople to assist with day-to-day supervision.”</i> Whilst I am satisfied that will provide appropriate assistance to already pro-active supervisors I am concerned that the statement will be seen as a “get out of jail free” card at the other end of the continuum where supervisors are “eligible officers” on the company agent’s licence – a name only with little or no supervision participation, i.e. licensed salespeople are the shareholders and they assume the supervision role. I see the statement above, in its present form, being conveniently misinterpreted by those shareholders and the agency.
AC16	Well done on the publishing of a Professional Standard on Supervision.
AC16	At the risk of sounding pedantic there is a growing trend amongst a cohort of agencies to appoint branch managers to manage an office, the branch manager then carries that title, either as an appointment or by self-appointed but with no branch manager’s licence. In my opinion, the trend has occurred, in the cohort I am referring to, owing to neither senior management nor appointed line managers understand the need to be licensed if that title is used in real estate agency work. Where the words “branch manager” are used in the document, it may be prudent to place the word “licensed” in front. In recent years, when presenting compliance training, I have found the need to add the expression “licensed” to remove any doubt.
AC19	I have reviewed the provisional draft that you sent me a link to and like the look of it. It is relevant and ‘to the point’, covering all issues that I could think of and more. I look forward to this becoming public.
AC21	The draft standard provides a good description of role & expectations of ‘supervisors’ of agents.
AC21	Sections 39 & 40, if become a mandatory requirement, will assist REAA when researching complaints re assessing the adequacy of ‘supervision’.
AC21	There is still no direction/stipulation as to what number of agents ‘a qualified person’ can competently supervise with adequate effectiveness? I fully understand that this is a hard number to define as circumstances and levels of agent competency vary immensely between company and office