

# Regulatory Tools and Responses Framework

Date: October 2024

Next Review: October 2026

## *Document History*

DATE	VERSION	CHANGE	APPROVED BY
Oct 2024	1.0	Approved by the REA Board	REA Board

## Background

1. The Real Estate Authority (**REA**) is the conduct regulator for the real estate industry under the Real Estate Agents Act 2008 (**the Act**). Consistent with the purpose of the Act, REA's strategic purpose is to:

"...promote and protect the interests of consumers in respect of transactions that relate to real estate and to promote public confidence in the performance of real estate agency work.<sup>1</sup>"
2. The Act empowers REA with a range of functions, including:
  - administering the licensing regime and the granting and renewal of licence applications;
  - developing practice rules and maintaining these rules for licensees;
  - developing consumer information and guides on matters relating to real estate transactions;
  - the setting of industry standards; and
  - managing an independent, transparent, and effective complaints and disciplinary system.
3. REA has a range of regulatory tools and statutory powers available to it to achieve its regulatory purpose. REA's regulatory tools and powers support good conduct to prevent harm, as well as respond, deter and punish actual and potential harm arising from licensee conduct. REA uses a range of responses from education and engagement, through to guidance and assistance through to enforcement via Complaint Assessment Committees, the Tribunal and the Courts.

## Purpose of Framework

4. REA has developed the Regulatory Tools and Responses Framework (the Framework) in accordance with our strategic objective to be a fair, efficient and transparent regulator and to oversee a regulatory system that is trusted and understood. This Framework is intended to support transparency and understanding of the regulatory interventions REA may use, and to help support our work as an effective, fair, transparent and professional regulator.
5. The Framework has two key purposes. Firstly, it will assist REA staff and CACs to take a consistent, effective and efficient approach to its regulatory practice, and secondly, it will provide clarity and transparency to consumers, the public and the real estate industry on how REA approaches its role as a responsible conduct regulator.
6. This document is not exhaustive or legally binding. REA, the Registrar and CACs will exercise their powers and functions under the Act in accordance with the law and relevant legal principles considering the particular circumstances of each individual case. This document will also be updated from time to time as appropriate.

## Approach to regulation

7. As a responsible conduct regulator, REA is focused on taking the most effective and efficient approach to its regulatory practice, being mindful of our obligation to consumers, the industry and the general public.
8. Where we identify potential or actual risks of harm, potential or actual non-compliance, or

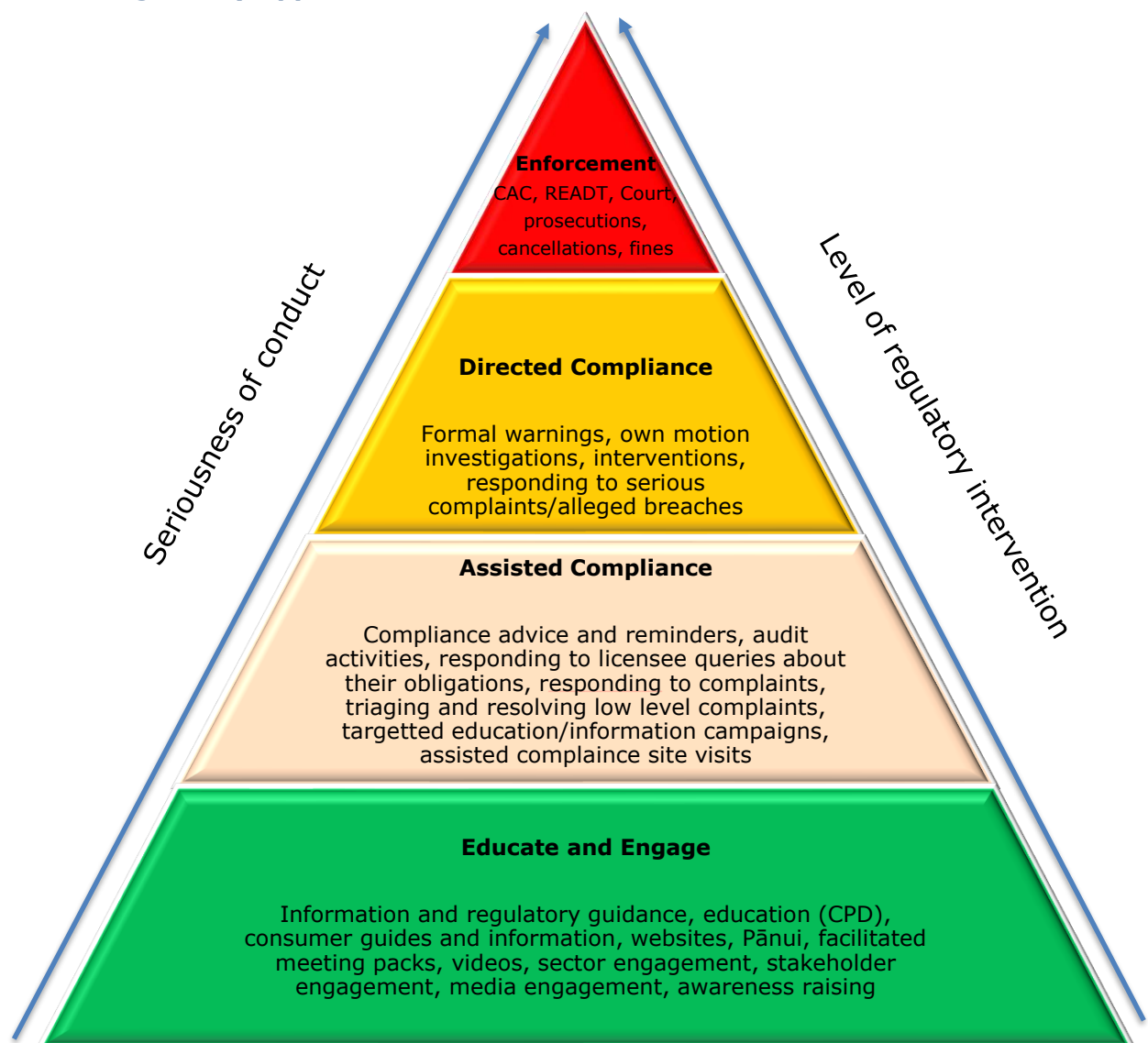
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<sup>1</sup> S 3(1) of Real Estate Agents Act 2008.

poor conduct that contravenes the Act or Rules, REA's regulatory objectives are to:

- Support licensees to modify or stop the behaviour or amend their practices to align with their regulatory and compliance obligations and good conduct to support voluntary compliance;
  - Ensure appropriate regulatory sanctions are applied to hold poor conduct to account, and deter future misconduct by the licensee and the wider sector; and
  - Obtain redress for affected consumers (where appropriate).
9. REA is committed to regulatory action which promotes and supports sector understanding of good conduct, supports compliance, and targets conduct that harms or presents the greatest likelihood of harm, to consumers or to public trust and confidence in the real estate sector. REA aims to take a proactive approach in its regulatory response to deliver improved outcomes.
10. REA applies a strategic approach to supporting sector compliance, in line with the regulatory pyramid:

**REA's Regulatory Approach**



11. In undertaking its regulatory function, REA is guided by the following principles:
- Transparency** – ensure licensees and consumers know how the Authority approaches its regulatory functions.
  - Proportionality** – any compliance or enforcement approach taken should align with the level of non-compliance and the potential/actual consumer harm.
  - Robust decisions** – appropriately respond to a complaint or an enforcement issue within an appropriate timeframe, with quality decisions.
  - Consistency** – apply a consistent approach to the application of regulatory response reflecting the circumstances of each case.

## Choice of regulatory response

12. REA has a wide range of statutory and non-statutory regulatory tools available to achieve its regulatory functions and objectives, and support and promote good conduct. Where REA becomes concerned about a licensee's or agency's conduct, it may choose to respond in a variety of formal and informal ways.
13. In undertaking its role as a conduct regulator, REA is committed to proactive, timely, and proportionate use of appropriate, fit-for-purpose regulatory response. This helps ensure that REA achieves appropriate outcomes, ensures protection of consumers from the most serious harms, and supports trust and confidence in the sector and the regulatory system.
14. Proactively engaging and educating licensees to support licensees to understand their obligations is a priority focus in REA's regulatory approach. REA will support the sector to build capability, encourage voluntary compliance, and address poor conduct and causes of consumer harm when these are identified through assisted or directed compliance where possible.
15. Where a complaint is made or an issue identified, REA may use a range of responses including supporting resolution, issue warnings or guidance, or choose to take no further action exercising its triage powers. REA may respond to more serious conduct by referral of the matter to a CAC, the Tribunal or Court, where that is determined to be an appropriate and proportionate regulatory response, and consistent with REA's statutory mandate.
16. The regulatory response will depend upon a range of factors, including the requirements of the Act and will be tailored to the facts of the situation. In determining the appropriate response, factors considered will include:
- Seriousness of alleged conduct, including the specific areas of breach, the length of time since the alleged breach, and any remediation undertaken;
  - Extent of actual or potential harm, or the risk of harm associated with the conduct; and
  - Public interest considerations, including REA's strategic regulatory priority areas.
17. Appended to this policy is an outline of the regulatory tools available to REA, broadly grouped into:
- **Appendix 1** – Information, guidance, and education
  - **Appendix 2** – Licensing
  - **Appendix 3** – Complaints and disciplinary processes
  - **Appendix 4** – REA Enforcement
  - **Appendix 5** – CAC and Tribunal powers
  - **Appendix 6** – Summary of REA Regulatory Tools and Responses

### **Publication, Monitoring, and Review**

18. The Framework will be published on the REA website.
19. REA General Counsel is responsible for maintaining this Framework. The Framework will be monitored and reviewed every 2 years.

Authorisation:



Denese Bates KC  
**Board Chair**

Dated: 24 October 2024

## Appendix 1 – Information, guidance, and education

Tool	Empowering provision(s) (where appropriate)	How it is used	Aim/purpose
<b>Practice Rules for professional conduct and client care</b>	S 14	REA may make practice rules for professional conduct and client care that will provide a reference point for disciplinary action.	Provides clear expectations for the sector that are enforceable under the regulatory regime.
<b>Practice Rules for continuing education</b>	S 15	REA may make practice rules that will provide the nature and timing at which continuing education is undertaken.	Provides clear expectations for the sector regarding continuing education. To educate licensees, encourage compliance, and encourage higher standards of conduct. Encourage industry-wide change.
<b>REA issued Regulatory Standards</b>	S 12(1)(i)	Standards set out requirements, and guiding principles and information to help licensees to understand how to meet their legal obligations	Improve industry practice by providing clear expectations for the sector that are enforceable under the regulatory regime.
<b>Consumer guides</b>	S 12(g) & (h)	Guides are documented materials that provide consumers with information to provide them with an understanding of real estate transaction process.  Guides are published and are publicly available.	Increase awareness of the buying and selling process for a property, REA as a conduct regulator, and general understanding of the regulatory regime

Tool	Empowering provision(s) (where appropriate)	How it is used	Aim/purpose
<b>REA issued regulatory guidance</b>	N/A	<p>Guidance notes are documented materials that provide further explanation and clarification about regulatory requirements or processes.</p> <p>Guidance can be used to explain how REA may approach part of its regulatory function, such as the assessment process for CPD exemptions and deferrals.</p>	<p>To provide additional support to support licensees to comply with their regulatory obligations.</p> <p>To provide assistance in navigating regulatory processes.</p>
<b>Information from REA</b>  Public information for licensees and consumers	S 12(1)(g) & (h)	<p>REA produces general information to inform both licensees and consumers. Such information includes information relating to the real estate process and obligations of licensees on the REA website, real estate transaction information on Settled.co.nz, sector Pānui, and published consumer guides.</p> <p>This may also involve more general information and awareness raising activity including in person engagement, and opinion pieces.</p>	<p>Increase awareness of REA and general understanding of the regulatory regime, compliance requirements, and REA processes.</p> <p>Prevent harm through informing consumers and licensees</p>

Tool	Empowering provision(s) (where appropriate)	How it is used	Aim/purpose
<b>Stakeholder engagement</b> – General and Specific engagement with industry participants	N/A	Stakeholder engagement at a general level can be used both to understand and to send strategic & compliance regulatory messages.  Examples of general stakeholder engagements include the Real Estate Leaders Forum and Industry Advisory Group. From time to time this also includes specific consultation, for instance on CPD topics or proposed guidance.	Working with stakeholders to guide the sector, including ensuring better understanding of REA's expectation of standards.  Raise standards of behaviour for licensees, without the need for formal regulatory action.
<b>Stakeholder engagement</b> – Specific engagement in relation to regulatory issues/concerns	N/A	REA may engage directly with sector participants on regulatory concerns, or where REA is seeking further information to understand business practices.	Working with stakeholders to guide the sector, including ensuring better understanding of REA's expectation of standards.  Raise standards of behaviour for licensees, without the need for formal regulatory action.
<b>Media Engagement</b>	N/A	REA may publish media related communications to inform the real estate industry of key matters relating to the organisation or regulatory compliance generally. This includes releasing media statements, where appropriate, in relation to specific cases.	Increase awareness of important regulatory matters, including sending regulatory messages to the sector and wider consumers.  Prevent harm through informing consumers and licensees



Tool	Empowering provision(s) (where appropriate)	How it is used	Aim/purpose
		Media engagement can be proactive and reactive.	
<b>Formal REA compliance correspondence</b>	N/A	<p>This tool is used where there is evidence of a misunderstanding of requirements or REA expectations, that would benefit from targeted engagement.</p> <p>This is formal assisted compliance correspondence that outlines regulatory requirements or compliance expectations.</p> <p>This tool is not a disciplinary response tool but sits as part of the information toolkit.</p>	<p>Inform and remind the licensees of their obligations under the Act/Code of conduct.</p> <p>Stop &amp; modify behaviour of licensees and helps guide licensees' future conduct and compliance.</p> <p>Raise standards across the sector to ensure high level of professional conduct.</p>
<b>Education/Continuing professional development</b> – CPD mandatory, elective, and refresher topics.	Clause 3 - Continuing Professional Development Rules) Notice	<p>REA determines and develops CPD courses based on REA information, research, data and feedback from the sector on risks and issues in the sector. It also has the ability to mandate certain topics are undertaken.</p> <p>CPD provides information to raise industry standards. This tool is particularly important where a topic is of significant importance sector wide, or where it has been identified as a significant industry-wide issue.</p>	<p>Educating licensees, encourage compliance, and encourage higher standards of conduct.</p> <p>Encourage industry-wide change.</p>

Tool	Empowering provision(s) (where appropriate)	How it is used	Aim/purpose
<b>Compliance education resources -</b> Facilitated meeting packs, information sheets, and REA videos on compliance matters	N/A	<p>These are education resources provided by REA on regulatory obligations and compliance matters that licensees need to be aware of to meet regulatory obligations.</p> <p>Meeting packs are designed as a facilitated meeting guidance booklet, intended for leaders in real estate agencies to use to run a session(s).</p> <p>Information sheets and videos provide targeted information to educate licensees about specific obligations/compliance areas.</p>	<p>Inform and remind the licensees of their obligations under the Act/Code of conduct.</p> <p>Educating licensees, encourage compliance, and encourage higher standards of conduct.</p>

## Appendix 2 – Licensing

Tool	Empowering provision(s) (where appropriate)	How it is used	Aim/purpose of the tool
<b>Issue licence –</b> Assess licence eligibility and determine licence application	S 34(b) and (c), S 36, S 43	In REA’s assessment of an application for a licence, the Registrar needs to determine whether to approve or decline an application. The Act sets out the requirements that REA needs to consider in its assessment of whether an application for a licensee will be approved.  This includes undertaking a Fit & Proper assessment.	Increase certainty and transparency within the profession of the high standard expected.  Ensure only fit and proper licensees enter, and remain in the industry  Provides the public and industry with assurance that there is a robust assessment process and that protections are in place to ensure there is a high standard in the profession.
<b>Cancel and suspend licences</b>	S 34(c), S 54, S55, S 57, S 58	REA has obligations to cancel or suspend licences in line with the requirements of the Act.	Ensure the accuracy of the Register.
<b>Objections</b>	S 40(4), S 41(2), S 42	The Act allows for members of the public to provide objections to licensing applications. The Act also specifies the process REA must follow when dealing with objections and allows the Registrar to determine the outcome of the application, taking into account any objections raised.	Ensure only fit and proper licensees enter the industry
<b>Determine applications for renewal of licences</b>	S 52	Anyone holding a licence must renew their licence annually. As part of this process, REA must assess the application against the requirements of the Act.	Ensure only fit and proper licensees remain in the industry

Tool	Empowering provision(s) (where appropriate)	How it is used	Aim/purpose of the tool
<b>Authorise temporary licences</b>	S 62	This is used in certain cases where REA determines there are appropriate grounds to issue a licence to a person to carry on another licensee's business for a period of time.	Enable business continuity to protect the interests of consumers.
<b>Issue Deferrals or Exemptions for CPD requirements</b>	Clause 13 - Continuing Professional Development Rules Notice	REA can grant exemptions and deferrals for CPD requirements in exceptional circumstances.	Allow for discretion to address exceptional circumstances that prevent completion of CPD requirements.
<b>Licensing compliance audits/ engagements</b>	N/A	As part of ensuring ongoing compliance with licensing requirements. This includes the annual Verifiable CPD Audit and the three yearly Non-Verifiable CPD Audit.	Ensure compliance standards are maintained.

## Appendix 3 – Complaints and disciplinary processes

Tool	Empowering provision(s) (where appropriate)	How it is used	Aim/purpose of the tool
<b>REA's Complaint Triage/Priority Assessment</b>	S 74	<p>This is used by REA to determine whether an enquiry constitutes a complaint, determines the priority of an accepted complaint, and the resulting path a complaint should go. A priority assessment takes all information provided by the complainant at face value and is assessed in relation to:</p> <ul style="list-style-type: none"> <li>The likely extent of the harm or risk of harm</li> <li>The seriousness of the alleged conduct</li> <li>The importance to the wider public interest in the conduct being deterred</li> <li>The relevance to REA's strategic concerns</li> </ul>	Ensures that concerns and complaints are dealt with effectively and efficiently and receive the most appropriate regulatory response
<b>Response to complaint - No further action</b>	S 74(3)(a)-(b)	This response is used in situations/circumstances where an 'alleged complaint' is not considered a complaint within REA's jurisdiction. This power is used if a complaint meets the criteria under Section 74(3)(a)-(b), i.e. it is either inconsequential, or frivolous or vexatious.	Ensures that concerns and complaints are dealt with effectively and efficiently and receive the appropriate regulatory response.
<b>Response to complaint - Refer complaint to another agency</b>	S 74(3)(c)	This tool is used when another agency is more appropriate, for instance if it relates to a breach of a regulatory requirement where there is a dedicated regulator (e.g. the DIA in relation to breaches of AML requirements).	Enables the correct agency, who is better placed to handle it, to be aware of the matter and take appropriate response/action.

Tool	Empowering provision(s) (where appropriate)	How it is used	Aim/purpose of the tool
<b>Response to complaint –</b> Complaint resolved to complainant's satisfaction	S 74(3)(d)	This tool is used by REA in situations where the situation is resolved and/or the complainant no longer wants to pursue their complaint.  As part of this process, REA may use its internal resolution capability to assist with achieving a resolution that satisfies the complainant, and where there are no disciplinary matters that require further action by REA.	Remedy harm caused by the non-compliance, and support trust and confidence.  Enable a proportionate response to the complaint.
<b>Response to complaint -</b> Referral to Complaints Assessment Committee (CAC)	S 74(2)(b) Act, Regulations and Rules	Where REA receives a complaint, it must be referred to a CAC unless it is closed under one of the powers outlined in s 74(3).	Address possible non-compliance.  Improve industry standards.
<b>REA initiated investigation and Referral to CAC</b>	S 12(1)(j) and (k)	REA can undertake an investigation on its own motion and self-refer matters to CACs. This will be used where the REA is of the opinion that information about conduct, such as information received through an industry report or as a result of internal regulatory activity, may require a regulatory response.	Address possible, unsatisfactory conduct, misconduct or other non-compliance.  Improve industry standards.

## Appendix 4 – REA Enforcement

Tool	Empowering provision(s) (where appropriate)	How it is used	Aim/purpose of the tool
<b>REA initiated Investigation</b>	N/A	REA can investigate matters that may constitute a breach of the Act and associated secondary legislation. Investigations inform decisions as to whether a regulatory response is appropriate, and if so, what avenue is most appropriate.	Determine whether breaches have occurred, address poor conduct not identified in a consumer complaint.
<b>Formal Warning</b>	REA Formal Warning Policy	This power provides an alternative to taking action against a licensee or person through prosecution. It informs the licensee that their conduct breached standards and should not be repeated. REA applies its Formal Warnings Policy (which operates in conjunction with the relevant guidance from the Solicitor-General for the use of warnings.	Remedy non-compliance Deter future non-compliance Support public trust and confidence.
<b>Prosecution</b>	S 12(1)(j)	This power enables REA to initiate proceedings relating to offences under the Act and associated secondary legislation. This includes action for unlicensed trading. The process for prosecution and decisions is outlined in REA's Prosecution and Charging Policy (which operates in conjunction with the relevant guidance from the Solicitor-General).	Remedy non-compliance Deter future non-compliance Support public trust and confidence.
<b>Publication of warnings or regulatory action</b>	N/A	REA can, as part of issuing a Warning or other regulatory action, determine that publication is appropriate.	Inform the public, and the industry, to protect consumer interests and encourage trust in the robustness of the regulatory regime.

<b>Trust account intervention</b>	S 27 – S 30	REA has regulatory powers to intervene in circumstances where a trust account has not been administered in accordance with the Act, specifically in respect of appointments (of an administrator or interim administrator) and audit requirements.	Protecting consumer funds and ensuring high levels of integrity and accountability by licensees.
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## Appendix 5 – CAC and Tribunal powers

Tool	Empowering provision(s) (where appropriate)	How it is used	Aim/purpose of the tool
<b>CAC decision to inquire</b>	S 78(a) and (b) and S 79	The CAC, after receiving an analysing summary of the complaint, has the power to decide the following:  Take no further action, effectively deciding not to investigate  Direct an investigator to investigate and report back	Determine appropriate regulatory response, including whether further investigation is justified.
<b>CAC determination - No further regulatory response</b>	S 79, S 80, and S 89(2)(c)	CACs have various powers to conclude a matter before an investigation or during an investigation, where they believe it is appropriate to do so.  They also have the power to, after the investigation and hearing, determine that no further regulatory action is required.	Enable an appropriate and proportionate regulatory response.  Support the appropriate use of regulatory resources to conclude matters that do not require regulatory action.
<b>CAC direction – provision of information</b>	S 85	As part of CAC investigations, information will be requested from parties to assist the investigation.  Where parties are unwilling to voluntarily produce requested information, the CAC can, by notice in writing, require that any person produce information/documents to support the CAC's inquiries.	Ensure CACs have the necessary information to assess matters before them.
<b>CAC direction - external mediation</b>	S 87	Where appropriate, the CAC may make an order directing parties to explore alternative resolution, conciliation, or mediation where it believes it would assist in the resolution, be in the public interest, and not undermine the timeliness of the complaint.	Support effective and proportionate resolution of complaints.

Tool	Empowering provision(s) (where appropriate)	How it is used	Aim/purpose of the tool
		This tool is separate to the REA facilitation process that may be undertaken as part of the initial complaint assessment.	
<b>CAC determination – penalties</b>	S 93(1)	<p>Where a CAC has determined that a licensee is guilty of unsatisfactory conduct, they have access to a variety of penalty orders:</p> <ul style="list-style-type: none"> <li>• Censure or reprimand</li> <li>• Order terms of an agreed settlement to take effect by consent</li> <li>• Apology</li> <li>• Training or education</li> <li>• Reduce, cancel or refund fees</li> <li>• Rectification &amp; relief (order the licensee to rectify an omission or error or provide relief from the consequences of that omission or error).</li> <li>• Fine (up to \$10,000 for individuals, \$20,000 for companies)</li> <li>• Business inspection (including any records, accounts and assets)</li> <li>• Refer to Disciplinary Tribunal for compensation</li> <li>• Costs</li> </ul> <p>In using this power, a CAC will have regards to the facts of the case, precedent around penalties, and submissions made by the parties.</p>	<p>Deter and punish non-compliance.</p> <p>Rectify consumer harm.</p>

Tool	Empowering provision(s) (where appropriate)	How it is used	Aim/purpose of the tool
<b>Enforcement of CAC orders</b>	S 98	Any order made by the CAC may be enforced as if it were an order made by the District Court.	Appropriate regulatory response.
<b>Suspension or cancellation of license by CAC for non-payment of fines or costs</b>	S 99	If a fine or costs ordered by the CAC remains unpaid for 60 days or longer, the CAC may suspend the person's license until payment is received. If payment is not received within 12 months, the CAC may cancel the license.	Deter and punish non-compliance. Appropriate regulatory response.
<b>CAC determination – charges for misconduct</b>	S78(e), S 91	Where the CAC has determined that conduct is likely to constitute misconduct, they can elect to lay misconduct charges with the READT. Prior to using this power, a CAC must have concluded its substantive decision and be satisfied that the laying of charges are in line with REA's Prosecution and Charging Policy (which operates in conjunction with relevant guidance from the Solicitor General) including that they are in the public interest.	Appropriate regulatory response.
<b>CAC direction – publication of decisions</b>	S 78(h), S 84	The CAC has discretion to direct publication of its decisions as necessary or desirable in the public interest, and must act in a way that is consistent with the rules of natural justice. In respect of a published decision, the CAC may choose to direct: <ul style="list-style-type: none"> <li>Publication without the names or identifying details of the Complainant (including the address of the Property), the Licensee and any third parties information suppressed.</li> </ul>	Deter future non-compliance Support public trust and confidence Inform the public, and the industry, to protect consumer interests and encourage trust in the robustness of the regulatory regime.

Tool	Empowering provision(s) (where appropriate)	How it is used	Aim/purpose of the tool
		<ul style="list-style-type: none"> <li>Publication without the names or identifying details of the Complainant (including the address of the Property), and any third parties, but will include the name of the Licensee and Agency</li> <li>Full publication.</li> </ul> <p>Decisions are published on the REA decisions database, and, if there is a disciplinary finding made against the licensee involved, on the Public Register.</p>	
<b>Real Estate Agents Disciplinary Tribunal (READT)</b>	S 102, S 108, S 110	<p>The READT has an oversight mandate as outlined in the Act. Broadly speaking it has a mandate to:</p> <ul style="list-style-type: none"> <li>Make a finding of misconduct against a licensee</li> <li>Make an order for compensation</li> <li>Considers appeals of CAC decision, overturn CAC decisions, or make changes to penalty decisions</li> <li>Review of Registrar decision making, and overturn Registrar decisions.</li> <li>Make orders for non-publication.</li> </ul>	<p>Appropriate regulatory response so significant conduct breaches.</p> <p>Appropriate oversight of regulatory actions.</p>