



REIA

REAL ESTATE INSTITUTE
OF AUSTRALIA

REIA RESPONSE TO THE PRODUCTIVITY COMMISSION STUDY ON GEOGRAPHIC LABOUR MOBILITY

FEBRUARY 2014

PREPARED BY

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The Real Estate Institute of Australia (REIA) is the peak national association for the real estate profession in Australia.

The REIA's members are the State and Territory Real Estate Institutes, through which around 75% of real estate agencies are collectively represented. The 2011 Census records the Rental, Hiring and Real Estate Services Industry employment sitting at a total of 117,880. By occupation the key data recorded by ABS Census were 64,699 Business Brokers, Property Managers, Principals, Real Estate Agents and Representatives.

The REIA represents an important element of the broader property and construction sector which together makes a significant contribution to Australia's social climate and economic development. Property contributes \$300 billion annually in economic activity.

Importantly, REIA represents an integral element of the small business sector. Some 99% of real estate agencies are small businesses and 11% of all small businesses in Australia are involved in real estate. Only 0.6% of businesses employ 50 or more persons.

REIA is committed to providing and assisting research and well-informed advice to the Federal Government, Opposition, professional members of the real estate sector, media and the public on a range of issues affecting the property market.

The REIA welcomes the opportunity to make a submission on the Productivity Commission's Draft Report on Geographic Labour Mobility.

Introduction

The REIA wishes to make a brief comment on draft regulation 12.5, which anticipates that a national scheme of occupational licensing will be implemented during 2014 under the general administration of the National Occupational Licensing Authority (NOLA), which is now defunct.

The *Intergovernmental Agreement for a National Licensing System for Specified Occupations* (the IGA) and the *National Partnership Agreement to Deliver a Seamless National Economy* (the national partnership) proposed national licensing laws for eight separate trades and professions. One of these is the property profession (real estate).

At its meeting held on 13 December 2013, the Council of Australian Governments decided:

Following the outcome of extensive State-based consultation, the majority of States decided not to pursue the proposed National Occupational Licensing Scheme reform. Most jurisdictions identified a number of concerns with the proposed NOLS model and potential costs. States instead decided to investigate approaches that would increase labour mobility and deliver net benefits for businesses and governments.

To this end, States agreed to work together via the Council for the Australian Federation (CAF) to develop alternative options for minimising licensing impediments to improving labour mobility and to manage the orderly disestablishment of the National Occupational Licensing Authority from early 2014.¹

¹ Council of Australian Governments *Communique* 13 December 2013: 5

Whilst REIA did not support the national scheme that was to be implemented during 2014 as it was proposed, REIA does not oppose regulations designed to improve labour mobility.

REIA's opposition to the proposal was for a number of reasons which included:

- (a) a very small ongoing net benefit of the proposed reforms. The anticipated returns were a mere \$96.66m per annum, on an industry generating revenues of \$8.9bn, or around 1%, with most of the asserted gain derived from the removal of compulsory continued professional development. For example, the State of Tasmania benefited by a mere \$580,000;
- (b) labour mobility benefits claimed were difficult to quantify with benefits based on 'scenarios or assumptions'. It is local knowledge that gives agents the capacity to provide services to customers. To that extent, REIA notes the observations made by Synergies Economic Consulting in a discussion paper prepared for the Queensland Government as part of its process of determining its position on the proposed national licensing model. These doubts from stakeholders over the impact of national licensing on labour mobility were noted in the Decision RIS but no adjustment was made to the benefit estimate;
- (c) the negative impact on consumer protection, through the removal of continued professional development and the reduction in the number of subjects that agents must satisfy to become licensed;
- (d) a separate reform, which seeks to harmonise conduct requirements (such as, for example, how to maintain a trust account) was to be undertaken by the former Legislative and Governance Forum on Consumer Affairs. It was acknowledged by those proposing the reform that the full benefits of a national licensing system would be realised if this further reform is undertaken.² REIA has always argued that conduct and licensing are interlinked. There is simply no net public benefit to design a system that will amplify and not reduce interstate confusion;
- (e) under the now abandoned licensing proposals, the former NOLA would have been responsible for developing national licensing policy for (to start with) the electrical occupations, plumbing and gasfitting occupations, property occupations and refrigeration and air conditioning mechanics, with building and building-related occupations, conveyancers and valuers included in a so - called 'second tranche' of national licensing. REIA believed it was somewhat doubtful that despite the best advice from specialist committees a single authority would have the technical capacity to develop licensing policy for such a diverse range of occupations; and
- (f) consultation following the release of the Decision RIS confirmed that administrative costs for jurisdictions in moving to a system of national licensing had not been adequately assessed and was severely underestimated.

The full REIA analysis may be found in the publication *A Problem Looking for a Problem: The Case for a "No" Vote on National Licensing for Property Occupations*, which may be found at: http://reia.com.au/userfiles/REIA_DRISsubmission2013WEB.pdf

² Decision RIS p.120

Lessons for the future

In a report prepared for the COAG Reform Council, the Allen Consulting Group said:

More generally, it appears that a sufficient reason for pursuing a ‘seamless reform’ has been that the net benefits have been shown (however rigorously) to be positive, with comparatively little attention paid to how big the net benefits would be. The canonical example pointed out to us ... is uniform wine labelling. While no doubt a worthy reform in itself, uniform wine labelling could not be expected to have a big effect on the national economy (or even on the economies of the large wine producing states).

*The problem is that while it might be argued that any apparently net positive reform is worth doing, this is not true because every reform creates an opportunity cost in terms of the scarce time and resources that are needed to negotiate, implement and monitor the reform. **All things considered, not every proposed reform is worth doing, and if they’re not worth doing they’re not worth doing well**³ (emphasis added).*

There are a number of errors made in the development of the now abandoned process that should not be repeated. These include:

- (a) not rushing to meet artificial deadlines. The IGA and the national partnership imposed short deadlines without regard to the time needed to develop a complex set of provisions to replace the current law. This played some role in the recommendation of a regulatory model unfit for purpose;
- (b) the principal body of officers ultimately charged to recommend a licensing model to governments, the National Licensing Steering Committee, were officers from treasuries with no experience in the development or administration of consumer protection laws, which led to the proposed removal from licensing laws of various provisions designed to protect the public (particularly with regards to the property and electrical occupations) that had little support from either industry or government;
- (c) the now abandoned model anticipated a single agency to make rules for trade and professions ranging from electricians and refrigeration mechanics to real estate agents with trade and profession specific committees merely providing advice. As discussed previously, there is doubt that a single agency would have the technical capacity to cogently make rules for such a broad set of trades and professions. If there is to be national regulation of this nature, the national agency should only be responsible for trades and professions that have some degree of connection and that the body actually making the rules for the trade and profession should be the board or committee established for that particular calling. An example is in the health sphere, where the Australian Health Practitioner Regulation Agency provides support for the boards established for the 15 health specific occupations the subject of the national regulation and accreditation scheme for health professionals⁴; and
- (d) the now abandoned model only proposed national uniformity of ‘licensing’ matters (generally the qualifications a property professional should hold) without dealing with

³ Allen Consulting Group *Designing Regulatory Reform Discussion of the Reform Models and Governance Arrangements in the COAG Seamless National Economy Reforms* (2012):11 (footnotes omitted)

⁴ See the structure contained in the *Health Practitioner Regulation National Law Act 2009* (Qld), the national law applied nationally to establish national registration and accreditation scheme for health professionals. See also www.ahpra.gov.au

'conduct' laws (such as how to maintain a trust account) – not proposing reform in a holistic manner is a recipe for confusion.

Moving Forward

The Productivity Commission said in its 2012 Research Paper *COAG's Regulatory and Competition Reform Agenda: A High Level Assessment of the Gains* that:

- (a) National licensing of occupations need to be based on a rigorous assessment of likely net benefits, and
- (b) It seems unlikely that national licensing will be appropriate for professions, such as real estate, for which cross-border relocations are not large.

It is understood the CAF will be examining what is described as a 'driver's licence' model of licensing professions to be regulated under the now abandoned national licensing scheme.

The general concept of what constitutes a 'driver's licence approach' to licensing is spelt out in Part 3.3 of the *Consultation Regulation Impact Statement – Proposal for National Licensing for Property Occupations*.

Given the relative absence of labour mobility in the real estate licensing area, REIA believes there is scope to develop what is called the 'automatic mutual recognition model', which has been described as a regime where:

...there would be no need for licensees working in a second jurisdiction to pay additional fees or lodge licence applications. Licensees choosing to work in an additional jurisdiction would also still need to comply with any relevant jurisdiction-specific conduct and compliance requirements that apply to the work they intend to perform. For example, licensees may be required to familiarise themselves with jurisdiction-specific variations in property work and/or notify the regulator of the work. The need to comply with such requirements would be a requirement of any option.⁵

The ability is there to determine a concordance that identifies the licences of one jurisdiction that accords with the licence of a second jurisdiction. An illustration is contained in Attachment 1.6 which shows the concordance for the five main licence categories - auctioneers; property manager representative; sales representative; real estate agent, and; property manager. The "shaded" represents the "originating" state of the qualification. At the same time REIA will be working towards a common legislative base for the profession so that ultimately a 'harmonised driver's licence' model can be developed.

REIA will be working with the CAF to assist with its deliberations in implementing the COAG decisions of 13 December 2013.

REIA accordingly recommends the Productivity Commission's recommendation 12.5 be amended to read:

Following the decision made by COAG on 13 December 2013, that the Council of Australian Governments considers establishing:

⁵ COAG National Licensing Steering Committee *Consultation Regulation Impact Statement Proposal for National Licensing for Property Occupations* (2012):11

⁶ See also the government website: <http://www.licencerecognition.gov.au/LRSearch.aspx>

- (a) ***An automatic mutual recognition scheme of registration for the trades and professions that were to be the subject of national regulation under the IGA;***
and
- (b) ***After considering the level of cross-border movement between jurisdictions where there is a genuine net public benefit, move towards the development of a harmonised set of laws for any relevant profession.***

ATTACHMENT 1

Codes for Scopes Of Work	
A licence may include some or all of these scopes of work. These scopes of work are used to describe the conditions and restrictions that may be applied in a ministerial declaration to make licences equivalent.	
A	Auction
B	Buy
R	Rent/Lease
S	Sell
SM	Strata Management
BU	Businesses
CT	Community Titles
FR	Fishing Rights
LE	Leases
LS	Livestock
MO	Mortgages
OT	Other Real Estate
PP	Personal Property
RE	Residential Real Estate
RR	Rural Real Estate
ST	Strata Titles
WR	Water Rights

	Auctioneers
State	Licence
NSW	Real Estate Agent's Licence with an Accreditation as an Auctioneer
NT	Auctioneer's Licence
QLD	Property Agent's and Motor Dealer's Licence (Auctioneer)
SA	Land Agent Registration
TAS	Registration as Real Estate Agent Excluding A – BU, LS, PP B – BU R – BU S – BU
VIC	Estate Agent's Licence
WA	Auctioneer's Licence Restricted to A – OT, RE
ACT	Real Estate Agent's Licence

Property Manager

State	Licence
NT	Agent's Representative (Property Management) Restricted Registration
QLD	Real Estate Salesperson Registration Certificate Restricted to R – OT, RE, RR
SA	No Equivalent
TAS	No Equivalent
VIC	No Equivalent
WA	Certificate of Registration as a Real Estate and Business Sales Representative Restricted to R – OT, RE, RR
ACT	Real Estate Salesperson Registration Restricted to R – OT, RE AND Stock and Station Salesperson Registration Restricted to R – RR
NSW	No Equivalent

Sales Representative

State	Licence
WA	Certificate of Registration as a Real Estate and Business Sales Representative
QLD	Real Estate Salesperson Registration Certificate
SA	No Equivalent
TAS	No Equivalent
VIC	No Equivalent
NT	Registration as an Agent's Representative Excluding SM – OT, RE, RR
ACT	Real Estate Salesperson Registration AND Business Salesperson Registration AND Stock and Station Salesperson Registration Excluding B – LS S – LS
NSW	Certificate of Registration as a Real Estate Salesperson AND Certificate of Registration as a Stock and Station Salesperson Excluding B – LS S – LS AND Certificate of Registration as a Business Salesperson

	Real Estate Agent Licence
State	Licence
NSW	Real Estate Agent's Licence
NT	Real Estate Agent's Licence Excluding SM – OT, RE, RR
QLD	Property Agent's and Motor Dealer's Licence (Real Estate Agent)
SA	Land Agent Registration
TAS	Registration as Real Estate Agent Restricted to B – OT, RE, RR R – OT, RE, RR S – OT, RE, RR
VIC	Estate Agent's Licence Restricted to B – OT, RE, RR R – OT, RE, RR S – OT, RE, RR
WA	Real Estate and Business Agent's Licence Excluding B – BU R – BU S – BU
ACT	Real Estate Agent's Licence

Property Manager

State	Licence
TAS	Registration as Property Manager
NT	Property Management Agent's Restricted Licence AND Business Agent's Licence Restricted to R – BU
QLD	Property Agent's and Motor Dealer's Licence (Real Estate Agent) Restricted to R – BU, OT, RE, RR
SA	No Equivalent
VIC	Estate Agent's Licence Restricted to R – BU, OT, RE, RR
WA	Real Estate and Business Agent's Licence Restricted to R – BU, OT, RE, RR
ACT	Real Estate Agent's Licence Restricted to R – OT, RE AND Stock and Station Agent's Licence Restricted to R – RR
NSW	No Equivalent