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REAL ESTATE INSTITUTE
OF AUSTRALIA



A SOLUTION LOOKING FOR A PROBLEM

The Case for a 'No' Vote on National Licensing
for Property Occupations

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September 2013



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EXECUTIVE SUMMARY

The Real Estate Institute of Australia (REIA) welcomes the opportunity to provide a response to the *Decision Regulation Impact Statement – Proposal for National Licensing for Property Occupations (the Decision RIS)*.

Whilst the Decision RIS contains some improvements on the Consultation RIS, particularly with regard to:

- the need for most commercial and all rural sales to be made with the assistance of a licensed agent (although there is some doubt about the suitability of deregulating sales relating to buildings on the basis of a specific square metre of space); and
- the reintroduction of probity requirements;

it remains the case the Decision RIS:

- fails to understand the importance of consumer protection and the integral role played by Continuing Professional Development (CPD);
- fails to comprehend the responsibilities of agents and agents' representatives in proposing educational qualifications;
- overestimates the productivity benefits of increased mobility;
- fails to appropriately estimate the transaction costs of jurisdictions in transferring over to a national scheme;
- fails to include an age requirement;
- irrationally separates 'licensing' and 'conduct harmonisation'; and
- requires states and territories to remove regulatory schemes that stakeholders are broadly happy with for relatively very small benefits.

REIA also notes that in a submission to the Productivity Commission, the National Occupational Licensing Authority said that in relation to the 'first wave' of occupations to be nationally licensed:

- the original timeline for implementing the current project was overly optimistic and underestimated the complexity of achieving the national consensus and legislative change required for the project; and
- the exclusion of conduct requirements from initial implementation of the national licensing system retains an inefficient system with inconsistencies across jurisdictions. This increases confusion for licensees and consumers about the applicable conduct rules and prevents the full benefits of the national system from being achieved.

REIA agrees and questions why, given all the observations made above:

- consumers in Western Australia, the Northern Territory, Tasmania and South Australia should face a lowering of educational qualifications of an agent from diploma level to certificate IV;
- consumers in Western Australia, NSW, Tasmania and the ACT should lose the benefit of CPD; whilst
- Victoria should lose regulations that requires agents to hold a single licence – something that jurisdiction values; and
- consumers in Queensland should face the lowering of entry level training from 7 to 4 units of competency,

simply so a flawed 'one size fits all' lowest common denominator of a scheme can be passed to meet an arbitrary bureaucratic timetable.

RECOMMENDATIONS

1. **The COAG Standing Council on Federal Financial Relations (SCFFR) votes to reject this version of national licensing of the property profession.**
2. **A review of the property development, sales and management qualifications is undertaken prior to reconsidering national licensing for the real estate profession.**
3. **Licensing and harmonised conduct laws should be developed simultaneously and holistically by officers with experience in the development of regulation for the property industry, overseen by the Legislative and Governance Forum on Consumer Affairs and guided by input from specialist committees drawn from the trade or vocation to be regulated. Jurisdictions would then provide the services to licensed people currently anticipated in the *Intergovernmental Agreement for a National Licensing System for Specified Occupations*.**
4. **Should that occur, NOLA should be abolished as there would be no role for it to play. This would have the advantage of removing a layer of red tape and cost to industry and government, as well as confusion on who to approach when dealing with a licensing policy issue.**

INTRODUCTION

The Real Estate Institute of Australia (REIA) welcomes the opportunity to provide a response to the *Decision Regulation Impact Statement – Proposal for National Licensing for Property Occupations (the Decision RIS)*.

Through its members, the State and Territory Real Estate Institutes (REIs), REIA represents around 80% of real estate agencies and is an important element of the broader property and construction sector, which makes a significant contribution to Australia's social climate and economic development. The 2011 Census records the Rental, Hiring and Real Estate Services Industry employment sitting at a total of 117,880 persons and contributes \$300 billion annually in economic activity.

Importantly, REIA represents an integral element of the small business sector. According to ABS statistics, 73% of real estate agency businesses employ fewer than 10 employees (over 50% of this portion employed fewer than five employees). Only 0.6% of businesses employ 50 or more people.

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.

REIA responded to the Consultation Regulation Impact Statement for this project (**the Consultation RIS**) in the document *Counting the Costs*, which may be found here: http://www.reia.com.au/userfiles/MEDIARELEASE_1350876017.pdf

In *Counting the Costs*, REIA expressed the following concerns:

1. *The conduct of the process leading up to the RIS, the conduct of the Information Sessions following the release of the RIS and the analysis in the RIS justifying the proposals. Any reform must conform to COAG best practice principles, including in particular adopting policy options generating the greatest net benefit to the community;*
2. *Entry level and agent licensing levels will drop which will result in increased consumer risk and a lowering of professional standards;*
3. *Commercial and property for the purposes of primary production, or rural real estate, will be deregulated meaning unqualified people will be able to assist consumers in these transactions (in many cases, one of the largest transactions they will make in a lifetime);*

4. *Ongoing professional development will not be a requirement for licensing which will result in many practitioners not participating in legislative updates which are pertinent to their area of real estate practice; and*
5. *Probity requirements were not included.*

Whilst the Decision RIS contains some improvements on the Consultation RIS, particularly with regard to:

- the need for most commercial and all rural sales to be made with the assistance of a licensed agent (although there is some doubt about the suitability of deregulating sales relating to buildings on the basis of a specific square metre of space); and
- the reintroduction of probity requirements;

it remains the case that the Decision RIS:

- fails to understand the importance of consumer protection and the integral role played by Continuing Professional Development (CPD);
- fails to comprehend the responsibilities of agents and agents' representatives in proposing educational qualifications;
- overestimates the productivity benefits of increased mobility;
- fails to appropriately estimate the transaction costs of jurisdictions in transferring over to a national scheme;
- fails to include an age requirement;
- irrationally separates 'licensing' and 'conduct harmonisation'; and
- requires states and territories to remove regulatory schemes that stakeholders are broadly happy with for relatively very small benefits.

CONSUMER PROTECTION UNDERESTIMATED

Whilst an attempt is made to capture some of the costs borne by some participants when complying with current licensing laws, there is no attempt to quantify the cost to consumers flowing from removing the consumer protection elements that are in force in some jurisdictions.

The Best Practice Regulation Handbook indicates:

When a proposal uses and produces goods sold in markets, estimating costs and benefits is in most cases conceptually more straight forward and is covered in a number of existing CBA guides.

It is, however, often difficult to identify and measure the effects of a regulatory proposal, especially when there are impacts on goods not traded in markets, such as pollution levels and access to scenic views.

Costs and benefits can be difficult to value in dollars because their magnitude may be unknown or uncertain, or because even if their impact is known, they are difficult to express in monetary terms. Examples include environmental, social and cultural considerations, regional impacts, health and safety, publicity and national defence.

*It is important that you identify and describe all costs and benefits. You should then quantify them as much as possible. When valuations are uncertain, sensitivity analysis should be used to test how varying the value assigned affects the overall viability of the proposal. **If the impacts cannot be valued, they should still be quantified in non-monetary terms.** For example, a regulation to reduce pollution could quantify the expected reduction in emissions. The quantification should aim to identify matters such as the assumptions applied to determine the effects, the impact on the community (such as how many people are affected and how) and the likelihood of the full impact being realised¹.*

Unfortunately, the Decision RIS merely says there can be an impact on consumer outcomes, which can lead to the 'changes in consumer protection outcomes, or changes in the availability of services for consumers' which are difficult to be 'easily quantified'² – and so, as can be seen by **Figure G.14** of the Decision RIS³ no attempt was made.

It is well known that a reason for licensing is to prevent market failure – in particular the presence of insufficient or inadequate information:

... Consumers may not have adequate access to the information they require to make decisions that are in their best interests. For example, consumers need access to information on the quality or content of products (including associated hazards). Sometimes, sellers may have access to better information than buyers (often referred to as 'information asymmetries'). Under such circumstances, governments may regulate to require information disclosure, to provide the information directly, or place restrictions on the supply of goods or services regarded as dangerous.⁴

And as REIA said in *Counting the Costs*:

This (the need for consumer protection) is particularly the case with property, where many Australian families and small businesses rely on real estate agents to either negotiate or sell the single biggest investment they will make – be it the family home, a small business or the superannuation nest egg.

Consumer protection laws must therefore be present to ensure consumers are not at risk when they make a most infrequent, yet substantial expenditure. Having professional and educated real estate agents also improves productivity with overall economic benefits.⁵

FIGURE G.14 How to calculate the impact of removing mandatory continuous professional development requirements



CPD = continuing professional development

1 <http://www.finance.gov.au/obpr/proposal/handbook/appendix-E-cost-benefit-analysis.html>

2 Decision RIS p. 20

3 Decision RIS p.190

4 Victorian Guide to Regulation [2011] p. 8-9

5 Page 7

REIA believes that CPD is an important element in ensuring that consumers are protected, through facilitating a culture where continued learning is encouraged and a structure through which changes in legislation or recognised best practice can be conveniently communicated to licensed agents is present, as opposed to a relatively haphazard 'as required' approach, which is the stated preference of the Decision RIS.

The REIA view is undoubtedly the rationale for CPD in the financial services, legal and health professions, and, as REIA observed in *Counting the Costs*, in the property industry in New Zealand and Singapore.

REIA was therefore disappointed the Decision RIS characterised this form of learning as something that can be an 'unwarranted burden on licensees and business where the training provided is not required, but undertaken simply to meet the regulatory requirement or where systems arise to exploit the requirement.'⁶

There is no robust evidence to believe that CPD should be discarded in those jurisdictions where it operates.

As the President of the Real Estate Institute of Australia has observed:

Mr Bushby said Western Australia was a good case study that showed the positive impact of mandatory CPD.

In WA, mandatory CPD was introduced for licensees in 2007 and for sales representatives in 2009. For the next five years up until and including 2009, the average number of written concerns raised by the public to the Real Estate Institute of Western Australia (REIWA) was 143 per cent, with a high of 196 in 2009.

In 2010, the year immediately after mandatory CPD was introduced for sales representatives, the number of written concerns dropped to 58 – a 70 per cent reduction over the previous year. The average for the three years to 2012 has been 55, or a 61 per cent reduction from the five years of 2005 to 2009.

Similarly, the ACT industry standards had improved after mandatory CPD was introduced, Mr Bushby added.⁷

The REIA view is shared by the Western Australian Government.

As the Department of Commerce has said:

The SAT's (State Administrative Tribunal) endorsement of the CPD requirements of the registration system highlights the importance of agents and sales representatives complying with this important obligation.

The CPD program is designed to increase the knowledge, skills and professionalism of those working in the real estate and business broking industries and provides the basis for maintaining high standards.⁸

The Department document is contained in Attachment 1.

It has been argued that there is no value for mandatory CPD, with the Deputy CEO of the National Occupational Licensing Authority (NOLA) being quoted as saying there is limited evidence to show mandatory CPD adds to the value of the real estate industry.⁹

Leaving aside the question of whether it is appropriate for a public servant to actively participate in such a debate when the final decision on national licensing is still to be made by the COAG Standing Council on Federal Financial Relations, it is a surprise such a conclusion was made given the available evidence.

REIA would prefer to rely on the observations of an agency currently administering a real estate licensing scheme rather than an agency that has yet to commence this task.

REIA believes that national licensing should not proceed until the costs of removing the consumer protection inherent in the CPD schemes operating in jurisdictions where those schemes are mandated, have been properly calculated.

6 Decision RIS p.54

7 Real Estate Business 5 August 2013

8 Government of Western Australia Department of Commerce Real Estate Industry E-Bulletin Issue 46, 17 July 2013

9 Real Estate Business 1 August 2013

LOW EDUCATIONAL REQUIREMENTS

With respect to educational qualifications, REIA still remains of the view expressed in *Counting the Costs* that:

Real estate agents have a responsibility to exercise high levels of knowledge, expertise and professionalism in their conduct, particularly (but not only) when performing the role of agency principal (or 'nominee'). The failure of real estate agents to acquire these essential skills and knowledge through lack of mandatory licensing training has the potential for serious financial ramifications for consumers in these transactions. It should be noted, in this regard, that financial planners are required to undertake training of key knowledge, skills and competencies that are broadly equivalent to the 'Diploma' level in the Australian Qualifications Framework.

It is also noted that there really are only small differences in costs between a Certificate IV and a full Diploma. A comparison of the figures contained in tables 4.74 and of the RIS suggests a difference of only \$1000 - \$1500 between the costs of the two courses. It is not plausible to argue that this cost differential would be a sufficient disincentive to discourage a prospective entrant from entering the industry.¹⁰

REIA believes that it is in the consumer's interest that skills are 'front-ended' – that is that knowledge is provided early to those wishing to participate in the property industry.

This is particularly the case in the property industry where, unlike other trades and professions where an inexperienced worker can be directly supervised by a more experienced worker, sales representatives must work independently and away from the real estate office.

Finally, as the quotation above suggests, the cost is not so high as to discourage a person who wishes to participate in the property industry from joining it.

It is well known that REIA is concerned that the current proposals are 'dumbing down' the property industry.

For this reason, REIA is particularly concerned that no reason has been given as to why the number of units a real estate representative must study was reduced from five units to four between the Consultation and the Decision RISs.

The Construction and Property Services Skills Council (CPSISC) is the government recognised body established to develop, manage and distribute training packages for the property industry. It is reviewing the property development, sales and management units of competency and qualifications in direct response to the development of a National Licensing System.

The Australian Qualifications Framework (AQF) establishes the quality of Australian qualifications. It provides the standards for Australian qualifications and incorporates the quality assured qualifications from each education and training sector into a single comprehensive national qualifications framework.

The more sensible outcome would be to allow a specialist body, such as CPSISC or the Australian Qualification Framework Council (AQF), to provide advice as to the level of qualification and courses that should be taken to protect the public interest, before moving to national regulation.

¹⁰ Page 14

¹¹ Page 72

LABOUR MOBILITY

The most common reason advanced for national licensing is the capacity to allow labour to move around the country in response to opportunities in the market place.

The Consultation RIS admits that the benefits from improved labour mobility are difficult to quantify and that benefits are based on 'scenarios or assumptions'.

The Decision RIS went on to say:

For the property occupations, the realisation of labour mobility benefits may depend on the extent to which local knowledge affects a licensee's ability to compete in another jurisdiction. While this may limit some licensees from becoming more mobile in the property market, there would still be greater opportunity to work in contiguous states and territories, generate more integrated national practices and work in jurisdictions with high demand for property services. Some jurisdictions believe that this factor is significant enough to lower the impact for property services.¹¹

It is this local knowledge that provides agents with the capacity to provide services to customers.

REIA notes the observations made by Synergies Economic Consulting, in its recent discussion paper prepared for the Queensland Government, that 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. Further, it now appears that the estimate made was for all the first tranche occupation groups and thus grossly overestimates the benefit for the property profession.

REIA finds it very disappointing that such an error could end up influencing a decision on national licensing.

There is no evidence to suggest that the current system impairs the mobility of a licensee who wishes to have the opportunity to work in another state or territory.

National licensing should be delayed until the importance of local knowledge is factored into the 'scenarios and assumptions' used to calculate the mobility benefits of national licensing.

ARE THERE ADMINISTRATIVE SAVINGS?

The Decision RIS said that under a national licensing approach, NOLA would be responsible for developing national licensing policy for each occupational area and overseeing its consistent application by jurisdictional regulators, with the potential saving of (only) \$15.9 million Net Present Value (NPV) over ten years.

The Decision RIS then went on to say:

These estimates are a useful indication of the potential scale of savings that could be realised. However, agencies doubt that these savings could be fully realised due in part to new and additional work to support NOLA and effectively contribute to national policy development, undertake additional administrative functions as delegates of the national licensing authority (as compared to current arrangements), or regulate additional licence categories.¹²

The jurisdictional 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 were severely underestimated.

This admission also means there must be some doubt about the presence of any administrative savings arising from the national scheme. It also raises questions about the capacity of NOLA to properly administer licensing schemes that range from refrigeration and air conditioning mechanics to real estate agents or conveyancers for the budgeted expenditure of \$8m per annum.

AGE REQUIREMENT

In *Counting the Costs*, REIA observed:

REIA finally notes that until all states and territories sign up to the process, a committee of officers from State and Territory Treasuries (the Committee) will be advising the COAG Standing Council on Federal Financial Relations (SCFFR) how to proceed.

This means economists are reporting to Ministers advised by more economists with little practical experience in property (or the electrical trades, refrigeration or any other first wave NOLA professions).

A failure to recommend an age requirement is one such example.

Currently, all jurisdictions except South Australia and Tasmania stipulate an age requirement of 18 years for applicants of real estate agent licenses, and in some cases an agent's representative registration.

The Decision RIS says:

Age does not necessarily provide knowledge and experience; an applicant for a real estate agent's licence could be over the age of 18 years and not have any experience in the real estate market. However, the common law and the laws of various states and territories restrict the ability of persons under the age of 18 years to enter into enforceable contracts, and therefore a person younger than 18 years could be limited in the sign-off processes for the sale of a property or a leasing arrangement. In some jurisdictions, age limits of 17 years already apply. Given the broader legal protections, it is not proposed to put specific age restrictions in place for national licensing. The impact of this proposal is expected to be minimal and has not been costed.¹³

If these restrictions are in place, wouldn't it make common sense to require an age limit?

National licensing of the real estate profession should not proceed without a minimum age requirement being included.

¹² Decision RIS pp.87-88

¹³ Decision RIS p.56

CONDUCT

The Decision RIS says:

As mentioned previously, the regulation of the wider behaviours and standards to be met by licensees ('conduct requirements') following the attainment of a licence is not within the scope of this reform. Licensees will be responsible for ensuring that they are aware of any relevant changes to jurisdictional legislation or requirements – for example, the way trust accounts are managed.

*A separate reform, which seeks to harmonise conduct requirements commencing with property occupations, is being undertaken by the Legislative and Governance Forum on Consumer Affairs. **The full benefits of a national licensing system would be realised if this further reform is undertaken.***

Whilst not directly linked to licence eligibility requirements, the issue of state-based conduct requirements has been raised by many stakeholders and in some submissions. During the consultation period, the view was expressed that unless the state-based conduct requirements were harmonised, the benefits of national licensing would be limited. Licensees will still be required to be conversant with the state and territory legislative requirements in the jurisdiction(s) in which they work.¹⁴

In *Counting the Costs*, REIA argued that licensing and conduct go together – that is they are the two sides of the same coin.

This is because 'conduct' relates to issues such as:

- trust accounting;
- management and supervision;
- information requirements;
- conduct of auctions;
- rights to commissions;
- agency agreements;
- standards of behaviour;
- appointment of receivers and managers.

REIA remains of the view that a national real estate profession will only be developed where both conduct and licensing requirements are in alignment.

The Decision RIS does not establish the grounds to say that licensing matters should proceed immediately without development of a consistent set of conduct provisions.

Therefore, REIA believes that national property licensing, if it goes ahead, should be developed holistically by officers with experience in the development of regulation for the property industry, overseen by the Legislative and Governance Forum on Consumer Affairs.

¹⁴ Decision RIS p.120

¹⁵ Allens Consulting Group *Designing Regulatory Reform Discussion of the Reform Models and Governance Arrangements in the COAG Seamless National Economy Reforms* (2012):11

¹⁶ Estimate contained on page 152 of the Decision RIS

LIMITED BENEFITS

In *Counting the Costs*, REIA noted a report prepared by the Allen Consulting Group for the COAG Reform Council meeting in Melbourne in September 2012 which 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.**¹⁵*

Table ES 5 of the Decision RIS, which sets out the ongoing net impacts of national licensing for the property occupations is shown in Attachment 2.

It indicates that the State of Tasmania will benefit by a mere \$580,000 per year as a result of national licensing, whilst 37% of the overall national benefit (\$36.99m pa) results from the removal of CPD requirements in those jurisdictions where it is currently required.

It also estimates that the ongoing net benefit of the proposed reforms is \$96.66m per annum, on an industry generating revenues of \$8.9bn, or around 1%.¹⁶

For this miniscule benefit:

- consumers in Western Australia, the Northern Territory, Tasmania and South Australia will face a lowering of educational qualifications of an agent from diploma level to certificate IV;
- consumers in Western Australia, NSW, Tasmania and the ACT will lose the benefit of CPD; whilst
- Victoria will lose regulations that requires agents to hold a single licence – something that jurisdiction values; and
- consumers in Queensland face the lowering of entry level training from 7 to 4 units of competency.

Whilst the benefits are limited it should also be noted that there are errors in the analysis that lead to an overestimation of the benefits. The DRIS indicated that an agent's representative in South Australia currently requires a Cert IV when in fact the requirement is for 17 units of competence. A consequence is that the largest single benefit for South Australia of the DRIS proposal i.e. \$30m over 10 years from the reduction in agents' representatives skills requirements, is overestimated.

NOLA'S VIEWS ON HOW THE FIRST WAVE OF NATIONAL LICENSING REVIEWS WENT

Since the publication of the Decision RIS, NOLA has made a submission (**the mobility submission**) to a Productivity Commission Inquiry on geographic labour mobility.¹⁷

The submission made a number of observations about the development of the *various national schemes* and can be found here: http://www.pc.gov.au/___data/assets/pdf_file/0007/125818/sub017-labour-mobility.pdf

Development timeline

In the mobility submission, NOLA set out the implementation timeline, and noted:

*Due to complexities of the reform and the issues identified during the policy development process following the passage of the National Law, the original scheduled commencement date has been delayed.*¹⁸

and concluded:

*The original timeline was overly optimistic and underestimated the complexity of achieving the national consensus and legislative change required for the project.*¹⁹

NOLA is correct in this conclusion.

It is true that the timeline has been rushed. This has led to the poor outcomes discussed in this paper.

Conduct

NOLA noted that conduct did not form part of this process, and went on to say:

*This means that, while a person may apply for a national licence as an electrician, for example, the licensee will still have to be aware of the different testing and certification requirements that apply in each jurisdiction they intend to operate in and comply with those requirements. They will, of course, need to meet a single set of requirements to be eligible for a licence under national licensing arrangements, and the scope of work that can be performed under that licence will be consistent across Australia.*²⁰

and concluded:

*The exclusion of conduct requirements from initial implementation of the national licensing system retains an inefficient system with inconsistencies across jurisdiction and, increased confusion for licensees and consumers about the applicable conduct rules and prevents the full benefits of the national system from being achieved.*²¹

Again, this is the right conclusion.

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.

Oversight

NOLA noted SCFFR had a full agenda that delayed decision that impacted on the development and progress of the national licensing system and concluded:

Given the continued pressures on the Standing Council, it may be more appropriate to assign responsibility for the national licensing system to a different Ministerial Council. At the time the reform commenced and in the 2009 Decision Regulation Impact Statement, the COAG Legislative and Governance Forum on Consumer Affairs (CAF) (formerly known as the Ministerial Council on Consumer Affairs) was proposed as an alternative. CAF's role is to consider consumer affairs and fair trading matters of national significance and, where possible, develop consistent approaches to those issues. These portfolios generally have direct experience with occupational licensing regimes.

An alternative could be the Standing Council on Tertiary Education, Skills and Employment (SCOTESE). SCOTESE's forward work program includes standards for training packages, harmonisation of Australian apprenticeship programs and vocational education reforms. These reforms clearly intersect with the establishment phases of the national licensing system, such as development of training requirements and deeming schedules for the state and territory licenses to be brought into the national scheme. However, a focus on training and qualification requirements for licensing occupations will lessen over time as national licensing commences and education and training issues are implemented.

¹⁷ <http://www.pc.gov.au/projects/study/labour-mobility>

¹⁸ NOLA: *Submission to the Productivity Commission in Relation to Geographic Mobility Issues Inquiry* (2013):8

¹⁹ Ibid

²⁰ Page 7

²¹ Ibid

CONCLUSION

On a strategic basis, future responsibility for the system may be better aligned with the policy interests of CAF Ministers. Once the policy position for the reforms have been agreed, CAF could become responsible for ongoing national occupational licensing system work. Improved governance arrangements may facilitate decision-making on strategic issues that affect its implementation and on future policy decisions.²²

And yet again this is the right conclusion.

The primary responsibility of SCFFR is the overarching framework for the Commonwealth's financial relations with the States and Territories.

It is not unreasonable to think that the licensing of vocations ranging from real estate agents to refrigeration mechanics does not rate highly given this agenda.

Moreover, the Treasury officers supporting SCFFR as well as those comprising the Deputy Senior Officials' Meeting (comprising Deputy Senior Officials of First Ministers' Departments and chaired by the Commonwealth) designed to solve jurisdictional disputes, simply don't have the background to make decisions on regulatory schemes that are designed to protect consumers.

That is why issues relating to the regulation of vocations should be overseen by government agencies with a suitable technical background.

There is one other matter flowing from NOLA's mobility submission.

If what they say is correct, why should the Australian community have to have imposed on it a flawed regulatory scheme, simply to meet an artificial government deadline?

The first paragraph of the conclusion of the Decision RIS says:

*National licensing is the recommended option for the property occupations. National licensing will achieve significant benefits through improved labour mobility and reduced red tape for businesses and licensees. While this benefit would be **greatest for larger companies working in multiple jurisdictions**, it would also be felt by small businesses, which would more readily be able to attract staff from other states and territories, and to understand the scope of the licenses prospective employees may hold.²³*

As REIA has indicated in the introduction to this paper, 73% of real estate agency businesses employ fewer than 10 employees (over 50% of this portion employed fewer than 5 employees) whilst only 0.6% of businesses employ 50 or more people. As argued in this response the mobility benefits claimed in the Decision RIS are based on 'scenarios and assumptions' that fail to take into account the knowledge of local areas that consumers would expect a licensed agent would possess.

REIA has also noted that it is proposed to greatly reduce consumer protections from Australia's property licensing laws, through the removal of CPD and the reduction in the number of subjects that agents must satisfy to become licensed.

REIA notes that this dumbing down of standards has also been criticised in the context of national licensing of electrical contractors, with the National Electrical and Communications Association saying:

Electrical installations in homes, and other buildings, will become less safe if the current plan to introduce a lowest-common-denominator national licence for people working in the electrical industry goes ahead as proposed by the Federal Government and overseen by the National Occupational and Licensing Authority (NOLA).

*The National Electrical and Communications Association (NECA), and other industry parties, unanimously agree that the current proposals fail the community in every way possible. It lowers the basic standards and forces all electrical contractors into a one-size-fits-all model. And as a result, **NECA cannot support the proposed national licensing model and will seek to lobby the Federal Government to have it modified.***

²² Page 9

²³ Decision RIS p.152

These views are also held by Energy Networks Australia.²⁴

There would appear to be a systemic problem in the way national licensing has been approached if the industry associations representing such different areas of the Australian economy have come to the same conclusion.

Page 3 of the Consultation RIS says:

The COAG best practice regulation guide requires that the RIS should provide a clear statement as to which is the preferred option and why. The RIS should demonstrate that:

- *the benefits of the proposal to the community outweigh the costs; and*
- *the preferred option has the greatest net benefit for the community, taking into account all the impacts.*

REIA has concluded that the proposed national reforms are nothing more than a solution looking for a problem and that the analysis of the Decision RIS does not support the proposition that the proposal offers a net benefit to the community.

THE AUSTRALIAN COMMUNITY WILL GAIN A NET BENEFIT IF:

- the COAG Standing Council on Federal Financial Relations votes to *reject* this version of national licensing of the property profession; and
- a review of the property development, sales and management qualifications is undertaken prior to reconsidering national licensing for the real estate profession; and
- licensing and harmonised conduct laws are developed simultaneously and holistically by officers with experience in the development of regulation for the property industry, overseen by the Legislative and Governance Forum on Consumer Affairs.

Finally, REIA notes the Consultation RIS says:

Under a national licensing approach, NOLA would be responsible for developing national licensing policy for each occupational area and overseeing its consistent application by jurisdictional regulators. The operation of licensing services would be delegated to the existing jurisdictional regulators.²⁵

Under the current national licensing proposals, NOLA would be responsible for developing national licensing policy for (to start with) the electrical occupations, plumbing and gas

fitting occupations, property occupations and refrigeration and air conditioning mechanics, with building and building-related occupations, surveyors, conveyancers and valuers included in a so called 'second tranche' of national licensing.

It is 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.

Moreover, as the jurisdictions have made clear, the state-based departments will still be responsible for providing a lot of the policy work as well as actually providing the licensing services to the community.

It would therefore be folly to adopt the proposal contained in NOLA's mobility submission that:

Transferring the remaining policy and legislative work to the Authority for the first wave of occupations would facilitate a coordinated and timely response to the issues raised in the consultation and aid in the implementation of national licensing for these occupations. It would also give clarity to industry, regulators and consumers.²⁶

The arguments contained in the Decision RIS and the NOLA mobility arrangement suggests a better alternative.

REIA believes that a net public benefit would be achieved if, as suggested by NOLA, the COAG Legislative and Governance Forum on Consumer Affairs makes policy decisions relating to the regulation of trades and vocations in Australia, guided by input from specialist committees drawn from the trade or vocation to be regulated.

Changes agreed to by the Forum can be enacted by either:

- amending the current national law, if an 'applied law' approach to regulation making is maintained; or
- through amendments to state based laws, if a 'model law' approach to regulation is adopted. If that occurred, the COAG Reform Council should be empowered to review and report on jurisdictional progress in adopting reforms.

Jurisdictions would then provide the services to licensed people currently anticipated in the *Intergovernmental Agreement for a National Licensing System for Specified Occupations.*

Should that occur, NOLA should be abolished as there would be no role for it to play. This would have the advantage of removing a layer of red tape and cost to industry and government, as well as confusion as to who to approach when dealing with a licensing policy issue.

²⁴ NECA Press release 23 July 2013; Energy Networks Australia Press Release 25 July 2013

²⁵ Decision RIS p.87

²⁶ Page 11

ATTACHMENT 1

Government of Western Australia Department of Commerce SAT's (State Administrative Tribunal) endorsement of the CPD requirements



Government of Western Australia
Department of Commerce

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SAT endorses professional development for industry

The State Administrative Tribunal (SAT) has ordered a real estate sales representative to complete his Compulsory Professional Development (CPD) program and, in the meantime, has suspended his registration until he has fully complied with this requirement.

On 5 July 2013, the SAT suspended the registration of **Peter Alan Durward** and ordered him to complete the outstanding three mandatory and seven elective CPD points for the 2009 calendar year. The order was issued after Consumer Protection and the sales representative reached a settlement by consent.

Mr Durward's certificate of registration will be reinstated when he provides the SAT with evidence that he has fully complied with the CPD requirements.

Commissioner for Consumer Protection Anne Driscoll said that the practical effects of the SAT's Order was that Mr Durward is unable to work within the real estate industry until he has completed his CPD requirements.

The SAT's endorsement of the CPD requirements of the registration system highlights the importance of agents and sales representatives complying with this important obligation.

The CPD program is designed to increase the knowledge, skills and professionalism of those working in the real estate and business broking industries and provides the basis for maintaining high standards. Every year, real estate and business agents and sales representatives must accumulate ten points within the CPD program, including three from mandatory activities and seven from elective activities.

Failure to comply with these requirements will jeopardise the renewal of an agent's or sales representative's triennial certificate, so it is recommended that all industry participants are aware of their obligations and acquire the minimum points needed.

Information on Compulsory Professional Development requirements can be found on the Consumer Protection website:

http://www.commerce.wa.gov.au/ConsumerProtection/Content/Licences/Real_Estate_Industry/CPD/CPD.html

For further enquiries, agents and sales representatives can email consumer@commerce.wa.gov.au or call **1300 30 40 54**.

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ATTACHMENT 2*Table ES 5: ongoing net impacts of national licensing for the property occupations*

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Total
Total ongoing	42.49	5.97	14.29	21.52	8.07	0.58	1.61	2.13	96.66
Direct impacts on licensees									
Removing requirement for continuous professional development	25.57	-	-	10.28	-	0.27	0.87	-	36.99
Real estate agents – qualification changes	-	-	(0.43)	0.96	0.84	0.09	(0.04)	0.15	1.56
Licensees undertaking both real estate and business agency work – qualification changes	-	(0.02)	(0.04)	-	(0.01)	(0.001)	-	-	(0.06)
Agent representatives – qualification changes	-	(0.85)	4.32	3.01	4.59	-	0.06	1.15	12.27
Strata managers – qualification changes	-	-	-	-	-	-	(0.03)	0.003	(0.03)
Real estate auctioneers – qualification changes	0.19	0.09	0.02	(0.03)	0.07	0.005	0.01	(0.003)	0.35
Consistent licence period (1, 3 or 5 years)	3.02	2.41	1.645	0.48	0.06	(0.01)	0.25	0.14	8.00
Agent representatives in Vic – increasing frequency of processing	-	(0.01)	-	-	-	-	-	-	(0.01)
Removing the need to hold multiple licenses	0.74	0.39	0.49	0.21	0.15	0.07	0.12	0.11	2.27
Government impacts									
Removing the need to hold multiple licences – government	(0.25)	(0.10)	(0.27)	(0.01)	(0.10)	(0.001)	(0.17)	(0.02)	(0.92)
NOLA – operational	(0.37)	(0.28)	(0.23)	(0.12)	(0.09)	(0.03)	-	(0.01)	(1.12)
Labour mobility	7.83	3.57	7.42	2.58	0.99	0.07	0.30	0.21	22.97
Broader impacts									
Business value-add	5.74	0.31	1.34	3.96	1.56	0.09	0.21	0.41	13.61
Other ongoing benefits	0.01	0.46	0.01	0.21	0.001	0.02	0.05	0.0019	0.76



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