



# REIA

REAL ESTATE INSTITUTE  
OF AUSTRALIA

## **REIA RESPONSE TO THE PRODUCTIVITY COMMISSION'S ISSUES PAPER ON *MUTUAL RECOGNITION SCHEMES***

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## **REIA RESPONSE TO THE PRODUCTIVITY COMMISSION'S ISSUES PAPER ON MUTUAL RECOGNITION SCHEMES**

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 per cent 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 per cent of real estate agencies are small businesses and 11 per cent of all small businesses in Australia are involved in real estate. Only 0.6 per cent 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 provide a response to the Commission's Issues Paper on Mutual Recognition Schemes.

### **Introduction**

The Commission's Issue Paper deals with the review of the Mutual Recognition Agreement (the MRA) and the Trans-Tasman Mutual Recognition Arrangement (the TTMRA).

REIA's response focusses on real estate professionals and addresses the Commission's terms of reference to recommend ways to further improve the inter-jurisdictional movement of skilled workers, and reduce red tape, including examining the scope for automatic mutual recognition where applicable and the extent to which the Agreement on Trans-Tasman Court Proceedings and Regulatory Enforcement could facilitate the Trans-Tasman provision of services by particular occupations, based on a single registration.

Under the MRA, Australian states or territories mutually recognise compliance with each other's laws for the sale of goods and the registration of occupations. Under the TTMRA such recognition is between Australia and New Zealand. The TTMRA

applies to occupations for which some form of legislation-based registration, certification, licensing, approval, admission or other form of authorisation is required.

## **Background**

To put the REIA's comments below in context and to clarify why the REIA's response in the 2003 and 2008 reviews of Mutual Recognition by the Productivity Commission differ in some respects to this one the outcomes of the COAG approach for national licensing for certain occupations including real estate professionals needs to be considered.

In December 2013 under the auspices of COAG the majority of States decided not to pursue the proposed National Occupational Licensing Scheme (NOLS) reform. Most jurisdictions identified a number of concerns with the proposed NOLS model and potential costs. Jurisdictions 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 Occupation Licensing Authority from early 2014. In effect the Commonwealth Government has moved the responsibility to the states to settle improved mutual recognition arrangements, at least for these occupation groups, through their body CAF.

CAF is committed to developing licensing reform which enhances flexibility and mobility for Australian workers, but does not impose a top-down, national system which would increase costs for businesses and individuals. State and Territory Governments are considering a package of reforms which would enable 'external equivalence' for selected licence categories across jurisdictional boundaries. Under an external equivalence model, licence holders would be able to work in another state or territory without having to apply for a new licence or pay a licence fee.

The decision on whether to implement CAF occupational licensing reforms, including external equivalence, rests with individual State and Territory Governments. Reforms can be implemented on a unilateral, bilateral, multilateral or national basis. States and Territories will also have the flexibility to opt-in to reforms over time.

CAF is committed to close consultation with industry through state and territory regulators to test reform proposals and gauge support at the outset which REIA, as a business representative body, applauds.

CAF has prioritised electrical, plumbing and gas-fitting, as these trades have high levels of mobility and are essential in industries such as mining and which has had a promising start. Following the successful completion of the electrical, plumbing and gas-fitting occupations CAF will be considering other trades and initially focussing on workable agreements among the eastern seaboard states (QLD, VIC and NSW).

***REIA recommends that the Council of Australian Federation occupational licensing reform process is allowed to run its course.***

## **Discussion**

### *Mutual Recognition*

Improved labour mobility is the main rationale advanced for having a system of mutual recognition for occupation groups. The reality of this for the real estate profession has been overstated by many notwithstanding the three geographic areas in Australia where the issue is said to arise – Canberra/Queanbeyan, Albury/Wodonga and Gold Coast/Tweed Heads.

The Consultation Regulation Impact Statements (RIS) associated with the attempt at a NOLS could not quantify this benefit and many critiques subsequently discredited the estimates provided in the RIS. In short there is no evidence to suggest that the current system impairs the mobility of a licensee who wishes to work in another state or territory.

The data for applications for mutual recognition should not be used as an indicator of the demand as these applications are in most instances the result of jurisdictional 'shopping and hopping' where agents choose to obtain a licence in a jurisdiction with lesser education and experience requirements most often as a 'quickie' course and then apply for mutual recognition of the licence in their home jurisdiction.

The REIA in its previous submission raised the point that abuse of Mutual Recognition was at times being facilitated by regulators who do not consistently verify addresses of licence applicants as being bona fide residents of that state. REIA has information from its member organisations suggesting that some trainees at the short courses are only temporary residents of that state and that within two months of completing the course, gained a licence in another state under Mutual Recognition. If nothing else this is a deceptive practice which should be addressed. It also indicates that those from interstate undertaking the course had no intention of practicing in the state in which they received their training.

The REIA supports the intent of Mutual Recognition for bona fide applications from estate agents who have qualified and worked in another state. However what is presently occurring, under the guise of Mutual Recognition is a long way from this and is putting at jeopardy consumers and the status of the industry.

Even where the application for Mutual Recognition is for genuine reasons there have been considerable difficulties with the operation of the system. These difficulties include:

- Some jurisdictions use negative licensing for certain categories of licencing. When experienced and qualified practitioners from these jurisdictions move to another jurisdiction, they are required to obtain registration as if they were new entrants to the profession, incurring both time and financial costs.
- The scope of licensing differs from one jurisdiction to another. Some real estate occupations which do not require licensing in some jurisdictions are

licensed in others. Mutual recognition does not facilitate labour mobility where no equivalent licences exist in other jurisdictions

- Abuse of mutual recognition occurs as a result of the different eligibility requirements for licensing. As indicated above some agents choose to obtain a licence in a jurisdiction with lower requirements and then apply for mutual recognition of the licence in their home jurisdiction.
- This is exacerbated by a lack of rigorous auditing of training bodies in that jurisdiction, resulting in some training providers 'fast-tracking' students through courses on the basis of recognition of prior learning, using less stringent criteria than applied by other training providers.
- Abuse of mutual recognition is facilitated when regulators do not consistently verify addresses the home addresses of licence applicants.

The REIA believes that Mutual Recognition is not an adequate solution for labour mobility and consumer protection. Without a nationwide consistent approach to real estate education, Mutual Recognition will be a second-best solution. Harmonisation of legislation, including that relating to education and licensing, would create more consistency nation-wide, albeit with added costs burdens for individuals as they obtain multiple licences to operate in other jurisdictions. If jurisdictional differences in education requirements continue to part of the system they will undermine the intention of Mutual Recognition.

It is against this background that REIA's response to the Productivity Council's study on geographic labour mobility in 2014 recommended that where there is a genuine net public benefit, there should be a move towards the development of a harmonised set of laws for the relevant occupation group.

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Until these jurisdictional differences are addressed REIA believes that Mutual Recognition arrangement should have stringent requirements for a licence holder to undertake 'top-up' training on moving to a new jurisdiction.

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#### *Automatic Mutual Recognition*

Under Automatic Mutual Recognition 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 still need to comply with any relevant jurisdiction-specific conduct and compliance requirements that apply to the work they intend to perform.

As discussed above REIA believes that improvements need to be made to current arrangements and as such Automatic Mutual Recognition would at this stage be very much considered a sub optimal solution. At least with Mutual Recognition (as

currently practised) the normative practice established by the law of requiring a person to register in the 'foreign' jurisdiction means the applicant is provided with the opportunity to become aware of the scope of practice and conduct requirements of that jurisdiction.

***REIA recommends that Automatic Mutual Recognition not be proceeded with at this stage.***

#### *Trans-Tasman Mutual Recognition Agreement*

Recognition under the Trans-Tasman Mutual Recognition Agreement (TTMRA) is dependent upon whether or not a person is registered in their home jurisdiction and not on the requirements for registration such as qualification attained. This means that the pre-requisite criteria for initial registration in the recipient jurisdiction cannot be imposed on persons seeking registration under the scheme. It is not the intention of the scheme to require a person to upgrade their qualifications to bring them into line with local registration requirements.

The concern in regards to the TTMRA are the same as discussed above for Mutual Recognition in that jurisdictional differences remain with the lack of equivalence in educational requirements.

These concerns need to be addressed before the profession would benefit from a move to the TTMRA and as such REIA believes that adopting automatic recognition between Australia and New Zealand for the real estate profession is premature.

***REIA recommends that the Trans-Tasman Mutual Recognition Agreement for real estate occupations not be proceeded with at this stage.***

#### ***Recommendations***

- ***The Council of Australian Federation occupational licensing reform process be allowed to run its course***
- ***Where there is a genuine net public benefit, there should be a move towards the development of a harmonised set of laws for the relevant occupation group***
- ***Mutual Recognition arrangement should have stringent requirements for a licence holder to undertake 'top-up' training on moving to a new jurisdiction***
- ***Automatic Mutual Recognition not be proceeded with at this stage***
- ***The Trans-Tasman Mutual Recognition Agreement for real estate occupations not be proceeded with at this stage.***