

Friday 12 February 2021

Mr Jason McDonald
First Assistant Secretary
Deregulation Unit, Prime Minister & Cabinet

Via online submission

Dear Mr McDonald,

RE: KEEP REAL ESTATE LOCAL – EXEMPTION REQUESTED FOR AUSTRALIAN REAL ESTATE AGENTS

Thank you for the engagement of the Occupational Mobility Project (OMP) team since August 2020, including the participation in the Property and Technical Services Roundtable on 8 February 2021. As you are aware, the Real Estate Institute of Australia (REIA) does not support the inclusion of real estate agents in the proposed Occupational Mobility reforms. The basis for this is set out below.

Significant confusion about the intersection of training, licensing, experience and on the job compliance

The Draft Bill only considers licensing in the context of registration which is only one component of a real estate agent's practice across training, licensing, experience and compliance. It assumes equivalency of 'on the job' compliance requirements that simply do not exist and uses 'automatic deemed registration' as a hold all to combine these various obligations. Real estate by nature requires highly localised expertise to deliver a high quality and effective service to buyers, sellers, tenants and landlords in line with local laws, especially consumer protection laws.

Lack of sufficient alignment

Mutual recognition was only ever meant to be introduced where there is existing sufficient harmonisation of legislation. For example, in Western Australia, there are four acts governing real estate agent behavior with an additional estimated 40 pieces of legislation across consumer protection, other property laws (e.g. strata management), general business compliance and industrial relations that real estate agents must have working knowledge of to comply with. In New South Wales, there are around 43 pieces of compliance-based legislation with no equivalency, alignment or mutual principles to the Western Australian acts. These have many points of difference which cannot be considered sufficiently harmonised for real estate agents to automatically practice in a second state. The Draft Bill ignores this and further does not include any test or criteria to ensure sufficient legislative alignment.

Training and qualifications should be above compliance and best practice

Similarly, too, training and qualifications overall vary for both registered officers and licensed agents. There is no single set of licensing requirements and REIA places the number of different categories of licensing in excess of 20 licenses that have no existing relationship with one another. As a result, the current mutual recognition framework grants licenses almost uniformly on a case by case basis after careful consideration by the relevant regulator. This licensing disparity has remains unaddressed.

The minimum criteria for the granting of this equivalency should align with national training reforms that require a Diploma of Property Services for a business owner and a full Certificate IV for associates or equivalents. Real estate agents would also have to have to prove their knowledge of local consumer protection laws and participate in CPD.

Jurisdiction shopping is an existing problem that will increase

The Draft Bill and Consultation Paper fail to address how to eliminate lowest common denominator standards, including 'shopping and hopping' behaviors which would allow individuals to rapidly secure real estate licenses at the least cost and quality and immediately practice in a second state. Many industries, real estate included, have Codes of Conduct and above compliance requirements for training and CPD. The Draft Bill in its current form does not require leading practice to be applied for any licensed occupations to negate this. REIA understands this is a serious concern for other property occupations.

What is the case for change

The Draft Bill does not address the industry's historical concerns raised about the need for alignment of consumer protection laws detailed in REIA's submissions to the 2013 National Licensing for Property Occupations and the 2015 Productivity Commissions Mutual Recognition Scheme consultations. In addition, in the absence of a development of a Regulatory Impact Statement (RIS), it is REIA's view that the reform approach in this instance does not meet the very high standards set by PM&Cs Office of Best Practice Regulation in terms of clearly identifying what is the policy problem to be solved.

Identifying the net benefit to real estate agents and Australians

The overall premise for the case for change by PM&C is that –

PwC estimated that AMR could lead to an additional \$2.4 billion in economic activity over ten years as a result of savings to workers and businesses, productivity improvements and extra surge capacity in response to natural disasters. Over 160,000 workers would benefit, including 44,000 people who will work interstate that would not otherwise have done so.

It is not clear what licensed occupations fall into these 160,000 and 44,000 but real estate agents do not suffer from workforce shortages or are required to be mobilised to assist in natural disaster recovery efforts. It is further unclear what productivity gains are involved and to what extent this consideration outweighs or offsets the significant consumer risk presented.

Exemptions

REIA has welcomed the inclusions of jurisdictions option to – via the relevant State Minister – discretionarily exempt occupations altogether or on a five-year basis on the grounds of significant consumer risk. However, this does not satisfactorily address the above concerns in its current form.

The Draft Bill relies entirely or 'passes the buck' to home states (who are all coping with mid-pandemic legislative backlogs) to re-legislate in order to put in place adequate consumer protections. This includes ensuring a system where all local requirements are met from notification and registration, fees paid to fidelity funds, insurance requirements and CPD.

This gap could be readily addressed by creating a simple national exemption for real estate as outlined in Attachment 1. REIA has also developed a series of case studies or scenarios that highlight the implementation difficulties and considerable consumer concerns across States and Territories.

REIA appreciates for many occupations the Draft Bill is a welcomed move with important benefits and has no desire to obstruct progress with this regard. We therefore reiterate our request real estate agents are excluded from the scope of these reforms on a national basis. Should you require any further information please do not hesitate to contact me on 0448 692 245 or anna.neelagama@reia.com.au.

Yours faithfully,



Anna Neelagama
Chief Executive Officer
Real Estate Institute of Australia

REIA comments on the Draft Bill

REIA thanks the Occupational Mobility Unit for their consultation to date and notes specifically the inclusion of 42(R) which allows State Ministers within jurisdictions to exempt occupations as well as other key provisions such as 42E – Notification may be required. REIA makes the following recommendations in relation to the Bill:

Section	Recommendation
<p>3A – Simplified outline of the Act</p> <p>The purpose of this Act is to promote the goal of freedom of 10 movement of goods and service providers in a national market in 11 Australia.</p>	<p>Whilst the intent is appreciated, freedom of movement should not be the primary determinant to the legislative principles.</p> <p>REIA recommends that wording be updated to reflect the equal importance of protection of Australian consumers in the delivery of mutual recognition.</p>
42D (1) – (2)– ‘Taken to be registered’	<p>REIA does not support an automatic ‘second state’ to as ‘taken to be registered’ for licensed real estate agents.</p> <p>REIA strongly encourages that an instrument be created to exempt real estate agents on a national basis.</p>
42D (3) – Exceptions to entitlement	<p>REIA suggest this area could include provisions to except entitlements unless occupations meet an agreed maximum or highest standard.</p> <p>The current wording including ‘substantive’ is insufficient to create a legislative prevention for “shoppers and hoppers.”</p>
42E – Notification may be required	<p>Notification should be a continued mandatory requirement of any mutual recognition framework with consumers able to verify this with local authorities.</p> <p>This should not be a discretionary option for states.</p>
42 (J) (1) Evidence of automatic deemed registration	The ability of consumers to verify whether an occupation is licensed to practice in any jurisdiction should be mandatory.
42 (L) Disciplinary action	<p>This section is supported as a bare minimum but raises the practicalities of implementation. How will local regulators police this? The remedy outlined in 42LA places the onus on the home jurisdiction to communicate this to all other States and Territories.</p> <p>This creates an unfair reporting burden to home states and should be amended.</p>
42 (R) Exempting registrations because of significant risk to consumer 3 protection	<p>REIA supports the ability for jurisdictions to exempt occupations on the basis of consumer risk.</p> <p>REIA would support the introduction of a legal instrument allowing the exemption of real estate agents nationally on the basis of existing consumer significant risk.</p>

<p>42SA, 42S, 42T – Responsibilities of home states or local registration authorities</p>	<p>The onus of administering and information is primarily placed on the home state which is already responsible for licensing.</p> <p>REIA challenges whether jurisdictions are resourced to execute this in order to provide the quality assurance required as per the legislative intent to exclude significant consumer risk.</p>
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