Real Estate Institute of Australia

REIA SUBMISSION TO PRODUCTIVITY COMMISSION REVIEW OF MUTAL RECOGNITION ARRANGEMENTS (IN THE REAL ESTATE INDUSTRY)

PROPOSAL

1. The Real Estate Institute of Australia (REIA) proposes that:

   a. the levels of qualifications and training programs for conferring licences and certificates of registration for all professional occupations within the real estate industry of Australia be determined jointly by the real estate industry and regulators on the basis of competency units that now form the keystone of the Australian vocational and educational and training system;
   b. the competency based training programs be standardised for all States and Territories, for the purpose of mutual recognition, under the auspices of the Australian National Training Authority (ANTA); and
   c. accordingly, there be consistent State and Territory legislation for real estate practise, and with New Zealand.

BACKGROUND

Review by Productivity Commission

2. The Commonwealth Government has asked the Productivity Commission to undertake a review of the Mutual Recognition Agreement (MRA) and the Trans Tasman Mutual Recognition Arrangement (TTMRA). Essentially, the Terms of Reference requires the study to assess the efficiency and effectiveness of the MRA and TTMRA and consider any changes to the MRA and TTMRA and related legislation or implementation thereof. These arrangements, which are closely integrated, encompass mutual recognition of regulations relating to the licensing and registration of occupations. They enable a person registered to practice in an occupation in one jurisdiction to do so elsewhere.

The Real Estate Industry

3. The real estate industry comprises approximately 8,000 real estate businesses that employ about 52,000 people. Approximately 95% of the businesses employ 20 people or less and about 70% of them are members of the Real Estate Institute. In terms of the scale of the industry, in 2001/02 there were about 500,000 dwelling sales valued at $124 billion, which was the equivalent of about 18% of GDP. In general terms, the industry occupational categories include:

   a. Owners of Real Estate Agencies;
   b. Managers of Real Estate Agencies;
   c. Real Estate Salespersons;

d. Real Estate Property Managers;
e. Body Corporate Managers;
f. Auctioneers;
g. Consultants;
h. Property Developers, and
i. Project Managers.

Regulation

4. The practice of offering real estate services is regulated by registration and licensing in all States and Territories. Whilst there is commonality between the jurisdictions in the way that the industry is regulated, there are also significant differences in the regulatory models that apply. For example at a generic level, Real Estate Agents (owners or managers of agencies) and Auctioneers are regulated by way of licences but, depending upon the State/Territory jurisdiction, Salespersons and Property Managers may or may not be regulated. Despite the differences in State and Territory licensing schemes, mutual recognition applies to a significant proportion of the licences in the various jurisdictions.

5. The terminology can vary between jurisdictions. For example, in South Australia real estate agents are termed Land Agents, which is not the case in most other jurisdictions. In addition, there are a number of occupations licensed separately in New South Wales that are either not licensed in other jurisdictions or which are included in their real estate licensing regimes (eg, business agents, stock and station agents, business agents, strata title managers).

6. There are currently some fundamental problems that impede the direct and efficient operation of mutual recognition principles within the industry. These problems relate specifically to the differing training standards between jurisdictions that are required for licensing and registration of real estate industry employees. For example, West Australia has experienced cases where agents from other jurisdictions who had successfully obtained a West Australian licence under mutual recognition arrangements, subsequently incurred heavy penalties under West Australian law as a result of providing incorrect advice and /or services to their clients because they had inadequate training and understanding of business broking in West Australia. Other similar cases can be cited for agents who have transferred their operations to different jurisdictions after successfully becoming licensed in their new State under mutual recognition arrangements.

7. The current differences between jurisdictions in respect to entry levels for licensing and registration to operate in the real estate industry are creating problems and inefficiencies within the industry. Labour mobility between the States is being restricted. The need to retrain new entrants who have originated from another State is inefficient, time-consuming and costly. Regulators and industry personnel alike become frustrated when they have to cope with people who wish to enter their industry from another jurisdiction where licensing and registration requirements are different.

8. A number of jurisdictions, including New South Wales, Victoria and South Australia, are in the process of reviewing their qualification requirements for licensing purposes. The current view of regulators in those jurisdictions is that the qualifications presently required are excessive in a number of instances (particularly for Real Estate Agent licences) given the legislative mandates under which the various regulators perform their duties.

9. However, it is important to note that considerable progress is being made towards developing a system for granting of a license based on entry-level competence, good character, continuing professional development and professional indemnity insurance. Similarly, progress is being made towards the grant of a certificate of registration based on good character and entry-level competency. A recent example was the passage of the NSW *Property, Stock and Business Agents Act 2002* which introduced a number of reforms aimed at increasing the competency of agents, improving customer protection levels, addressing quality service concerns, reducing the regulatory burden and improving the way the legislation operates.

Education

10. The industry supports regulation by way of licensing/registration and associated educational qualifications. The education standard(s) is an integral part of licensing and registration. The industry view promoted by the REIA, is that the industry should strive for a set of agreed competency based education levels for both licensing and registration that will be consistent among all jurisdictions through mutual recognition arrangements. The regulators and industry should jointly develop the standards and arrangements which must apply across the nation.

11. At a conference of State Institutes which met prior to the formation of the REIA in 1923, several speakers made observations about the 'profession' that are still made today. For example, FG Wood from Victoria said *"We as a profession are suffering severely under a very wrongful name, and discredit has been brought about by the operations of a number of undesirable people who are in this game. It seems to me that the first essential we should aim at is to come to some concrete decision as to what action we should take unitedly in all our States, that shall at least have the object of preventing those undesirable people from figuring in this noble profession"* (1923).

12. In 1990, a study entitled "See How They Tick" conducted for the REIA by RR Fraser and A Pecotich highlighted the results of their survey of consumer attitudes as the *"low ranking accorded the real estate professional association and the image of the agent in the public mind"* (1990). Public perceptions are little different today. The report said, *"a continuing public relations campaign backed by more than lip service should follow to improve the public image of the profession"*. It went on: *"Operation Image will be a long haul. It could well begin with the sales force, the frontline troops who most often present the public face of the industry to the world at large. Thorough training with great emphasis on high standards of ethical conduct together with structured career*

paths for salespeople would help. In tandem should be a continuing honing of management skills to attain and maintain professional standards of the highest order."

13. REIA has actively promoted the establishment of qualification benchmarks or agreed levels of competency based education standards for the range of occupational categories within the industry, and that such standards should be mutually recognised around Australia.

14. The requirements for the real estate industry should build on the considerable progress that has been made through the National Training Reform Agenda over the last few years. The Australian vocational education and training system is now largely based on units of competency, and units of competency are developed by industry/enterprise parties and subsequently endorsed by the Australian National Training Authority (ANTA). This model provides the ideal basis for moving forward to eradicate the current constraints to the efficient application of mutual recognition arrangements within the real estate industry.

15. Units of competency, assessment guidelines, qualifications and support materials have been developed for real estate agents and stock and station agents which are contained in the Property Development and Management Training Package. The Training Package for business agents is currently going through the endorsement process with ANTA. The development of standards for strata/community managing agents is yet to commence. The primary objective is to bring regulators and industry together from all States to ensure that the same processes apply across Australia.

The Need for Mutual Recognition

16. The rationale for mutual recognition of education standards for the real estate industry is predicated on the need to facilitate the move towards, and operations of, a national real estate market that will become truly global and more efficient in the foreseeable future. The globalisation of the real estate market is occurring with the increasing mobility of the Australian population, access to the internet to facilitate interstate purchases of property either for investment or owner occupation, and the national and global view of superannuation funds seeking investments in both commercial and industrial property.

17. In the absence of "national" licensing a "nation-wide" approach is required for the mutual recognition of competency based education standards for licensing and registration to ensure that those who wish to participate in the industry have the same necessary knowledge and skills to undertake the range of work permitted by the (nation-wide) licensing scheme.

Status of Training

18. Before a real estate stream of the Property Development and Management Training Package (PRD01) was implemented in May 2001, industry regulators utilised

the National Curriculum for Real Estate (ATRAC 94/006). This curriculum could not be applied consistently in the States and Territories because of differences in the regulatory regimes between jurisdictions.

19. In May 2001, the industry endorsed a real estate stream of the Property Development and Management Training Package (PRD01). The Training Package incorporates the following real estate competency standards:

a. Certificate III in Property (Real Estate) - PRD30101;
b. Certificate IV in Property (Real Estate) - PRD40101; and
c. Diploma of Property (Real Estate) - PRD50101.

Implementation of the qualifications under PRD01 in the States and Territories is proceeding slowly and is variable between jurisdictions, again because of difficulties related to licensing requirements in some jurisdictions.

ISSUES

20. The fundamental issues for the REIA are that: there should be agreed nation-wide education standards and recognition of education throughout Australia and New Zealand; and there should be consistent legislation in the States and Territories across Australia in licensing and registration requirements.

21. Currently, there are differences between industry and regulators on the competency requirements for licensing that must be met to satisfy regulatory requirements. There are differing views on what occupations should be regulated, and what form such regulation should take, particularly in relation to standards of education requirements for registration and licensing. Differences between the States and Territories legislation include examples, such as:

a. the term of licence,
b. criteria for suitability for all classes of licenses,
c. eligibility through education for real estate agent's license,
d. criteria for eligibility of auctioneer's license and other licenses, and
e. method of agency appointments.

22. There is a clear need for the industry and regulators to come together to resolve the differences in relation to levels of competency based licensing and registration requirements for all real estate business owners and managers, and real estate occupations across all jurisdictions in Australia. These differences promote inefficiencies for regulators in duplicating resources and effort across Australia. In labour mobility, they make it costly and time-consuming for real estate industry professionals to meet different requirements. There are no boundaries on the global business map. Moreover, these differences affect the consumer in terms of their expectations and confidence in industry service across the nation.

23. Once the issues have been resolved, the agreed competency based training requirements for licensing and registration of real estate occupations should be implemented in all jurisdictions. Additionally, where practicable, mutual recognition of

competency based training should apply between industries, as well as within the real estate industry.

THE WAY FORWARD

24. REIA proposes the following procedures to assist the process of establishing common national education requirements for licensing real estate occupations.

25. First, there is a clear need for the industry and regulators to agree on common definitions or meanings for terms used in the regulatory lexicon. For example, words such as registration, licensing, agent and salesperson have subtly different meanings in legislation from one State to another. In South Australia, real estate agents are termed Land Agents, but this is not the case in most other jurisdictions. In New South Wales, some occupations are licensed separately whereas they are either not licensed or are included in the real estate licensing regimes (eg business agents, stock and station agents, business agents and strata title managers) of other jurisdictions.

26. Second, agreement is needed on what occupations should be regulated by way of licensing, registration, or a combination of licensing and registration. The REIA proposes that the following occupations should be regulated in accordance with competency based training requirements linked directly to legislative requirements for licensing:

a. Real Estate Agent (owner or manager responsible for Trust Account and other regulatory responsibilities),
b. Property Developer (if selling own stock),
c. Business Broker,
d. Body Corporate Manager,
e. Shopping Centre Manager,
f. Auctioneer,
g. Real estate salesperson, and
h. Real estate property manager.

27. Third, for each occupational category listed above, regulators and industry should agree on the complete range of competencies considered essential to ensure that:

a. There are competency requirements to perform the duties and protect consumer interests in accordance with State/Territory real estate legislation, and
b. higher levels of education that may be attained through industry professional training programs are defined with a view to improving the professional standing and public image of industry personnel and their delivery of services to the community.

28. To achieve these goals, the Property Development and Management Training Package needs to be revised in the light of the requirements for competency based training to ensure that industry participants have the necessary knowledge and skills to undertake the range of work permitted by the licensing scheme and to achieve the protection of consumers. Currently, the Certificate III in Property (Real Estate) does not

meet the requirements to register a salesperson. Certificate IV in Property (Real Estate) provides competencies well in excess of the requirements to register a salesperson, and the Diploma of Property (Real Estate) qualifications meet the educational requirements to license an agent fairly well. Furthermore, although many of the standards identified for licensing purposes in New South Wales fall within the Certificate IV some also fall within the Diploma.

29. Fourth, when the agreed units of competency for each category of regulated real estate occupation have been determined and the Training Package has been revised accordingly, the States and Territories legislation must be amended to reflect the changes.

30. The processes outlined above should be commenced as soon as possible. They should be included in the review of the Property Development and Management Training Package that was scheduled to commence in March 2003. REIA supports the participation of regulators in the review to ensure that their competency related requirements are reflected as the building blocks in the Training Package. REIA also continues to advocate that the Training Package contains the equivalent of (revised) Certificate IV and higher level Diploma qualifications regarded as essential requirements for improving the standards of services provided by the industry to consumers. The higher education qualifications will also enhance the image of both the industry and employees in the eyes of the community. The emphasis throughout the review should be to facilitate the establishment of common education qualifications and licensing standards in the real estate industry and to encourage mutual recognition of those arrangements throughout Australia and New Zealand.

31. The review should also address the issue of who will be responsible for implementing the revised Training Package. Universities and other tertiary education institutions, the Real Estate Institutes and the principals of individual real estate businesses will all have a vital role to play.

SUMMARY

32. The practice of offering real estate services is regulated by registration and licensing in all States and Territories. There is commonality between the jurisdictions in the way that the industry is regulated, but there are also significant differences in the regulatory models that apply.

33. The real estate market is increasingly coming under the influence of the forces of globalisation with the increasing mobility of the Australian population, access to the internet to facilitate interstate purchases of property either for investment or owner occupation, and the national and global view of superannuation funds seeking investments in both commercial and industrial property. To meet these challenges, there is a growing need for a national approach for the mutual recognition of competency based training standards for licensing and registration of industry participants.

34. Although considerable changes have already been made, the current Property Development and Management Training Package does not adequately meet the needs of regulators and its implementation by them is highly variable between the State/Territory jurisdictions. Consequently, implementation of the Training Package is proceeding very slowly.

35. To resolve these issues, the REIA proposed a four-point process involving the close cooperation of the real estate industry and its regulators. First, the industry and its regulators should agree on common definitions or meanings for terms used in the regulatory lexicon. Second, agreement is needed on the occupations that should be regulated by way of licensing, registration, or a combination of licensing and registration. Third, for each industry occupational category, agreement is needed on the complete range of competencies considered essential to ensure that:

a. there are competency requirements to perform the duties and protect consumer interests in accordance with State/Territory real estate legislation, and
b. higher levels of education that may be attained through industry professional training programs are defined with a view to improving the professional standing and public image of industry personnel and their delivery of services to the community.

Fourth, the States and Territories legislation must be amended to reflect the changes.

36. These processes should be commenced as soon as possible as part of the review of the Property Development and Management Training Package. The emphasis throughout the review should be to facilitate the establishment of common education qualifications and licensing standards in the real estate industry and to encourage mutual recognition of those arrangements throughout Australia and New Zealand. Additionally, mutual recognition of competency based training should apply across industries as well as within the real estate industry.

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