



REIA SUBMISSION TO THE PRODUCTIVITY COMMISSION **REVIEW OF MUTUAL RECOGNITION SCHEMES**

BACKGROUND

1. The Productivity Commission has been asked to undertake a review of the Mutual Recognition Agreement (MRA) and the Trans-Tasman Mutual Recognition Arrangement (TTMRA) in order to:

- a. assess the coverage, efficiency and effectiveness of the Agreements since the Commission's 2003 review;
- b. assess provisions to support more efficient operation of the Agreements;
- c. examine possible enhancements to the functioning of the Agreements; and
- d. explore implications for the TTMRA as a result of bilateral engagements with third countries.

2. The Real Estate Institute of Australia (REIA) is the national professional association for the real estate industry in Australia. REIA has eight members, comprised of the State and Territory Real Estate Institutes, through which about 80 per cent of real estate firms and licensed agents are collectively represented. Close links are maintained with the REIA's New Zealand counterpart, the Real Estate Institute of New Zealand.

3. The occupational licensing provisions under the MRA and TTMRA affect the real estate profession as each of the eight Australian jurisdictions and New Zealand all operate occupational licensing regimes with legislation governing real estate practice. As such, these regimes impact significantly on the profession, particularly where legislation and regulations differ and/or are in conflict.

4. The REIA provided a submission to the Productivity Commission's 2003 Review of MRA and TTMRA. It has subsequently worked closely with the COAG Skills Recognition Steering Committee through the Property Agents Action Group in the second phase of the licence recognition project. The REIA understands that Ministerial Declarations on the mutual recognition of real estate licences will be finalised in the near future.

5. The REIA has also made submissions to the COAG Business Regulation and Competition Working Group (BRCWG) regarding national licensing, and problems arising from the mutual recognition process which have not been addressed through the Ministerial Declarations and the licence recognition project.

PURPOSE

6. The purpose of this submission is to put forward the REIA's views on the MRA and the TTMRA and matters raised in the Productivity Commission's Issues Paper of June 2008.

ISSUES

Rationale for mutual recognition

7. The real estate market is increasingly globalised with the an internationally mobile labour force, access to the internet to facilitate interstate and international purchases of property, either for investment or owner occupation, and the national and global view of superannuation funds investing in property. Yet there are nine jurisdictions regulating the Australia-New Zealand real estate market and those who practice real estate. There is an urgent need for the legislative environment to catch up with the commercial environment in which the real estate profession practises.

8. Without a nation-wide consistent approach to real estate education and licensing, mutual recognition has been a second-best solution to the labour mobility problems faced by individuals and employers who want to operate either across or in other jurisdictions. Mutual recognition makes it possible for many registered or licensed real estate practitioners to take up employment in other jurisdictions, without incurring substantial time and financial costs. It also makes it possible for employers to re-locate employees to meet their business needs, again without incurring substantial time and financial costs.

Occupations and interpretation of equivalence

9. There have however been considerable difficulties with the operation of the mutual recognition system. These include:

- a. Some jurisdictions use negative licensing for property managers and salespeople. 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. This has not been addressed in the Ministerial Declarations on mutual recognition of real estate licensing, developed during 2007/08.
- b. 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, eg property developer must be licensed in Queensland but not elsewhere. Other occupations have restricted licensing in some jurisdictions, eg there is a restricted licence

for on-site residential property managers in New South Wales. Mutual recognition does not facilitate labour mobility where no equivalent licences exist in other jurisdictions.

- c. Different eligibility requirements makes the mutual recognition process inconsistent and discriminatory. While the mutual recognition process treats comparable licences as equivalent, the eligibility requirements underpinning them differ significantly. For example, some jurisdictions require up to two years' experience in the real estate industry before a full licence is granted. Other jurisdictions have more significant training requirements.
- d. Abuse of mutual recognition occurs partly as a result of the different eligibility requirements for licensing. For example, some agents choose to obtain an NSW licence and then apply for mutual recognition of the licence in their home jurisdiction, because there are lesser education and experience requirements in NSW. 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 of licence applicants.

Ministerial declarations or a shift to national licensing

10. The REIA believes that mutual recognition is not an adequate solution for labor mobility and consumer protection in a national and international market environment, because of the difficulties identified above. Harmonisation of legislation, including that relating to education and licensing, would create more consistency nation-wide, but would still add cost burdens for individuals and businesses, as they would need to obtain multiple licences to operate in multiple jurisdictions. The REIA preferred model is a national licence system for real estate professionals. This could be administered at State/Territory level, in the same way that driver's licences are administered, to ensure a continuing revenue stream to the States/Territories from occupational licences. This would need to be underpinned by harmonised legislation for the system to be effective.

11. Should a national licence system not be adopted, negative licensing arrangements should be explicitly covered by the MRA and the TTMRA. In jurisdictions such as Tasmania and Victoria which currently negatively licence property managers and sales representatives, there are detailed eligibility requirements in place. The Ministerial Declarations on mutual recognition of real estate occupations should recognise the eligibility requirement and the continuing right to practise a specific occupation from a jurisdiction which employs negative licensing as equivalent to a licence for that particular occupation.

12. The effective application of the TTMRA would be enhanced by Ministerial Declarations being extended to include New Zealand licensing. Currently, the arrangements for recognition of New Zealand licences in Australia and vice-versa are at the discretion of the regulators, and there is no certainty for individuals or employers. Further, New Zealand licences are not recognised in Western Australia.

More dialogue is required with New Zealand regulators to consider how this might impact labour movement between Australia and New Zealand and the application of the TTMRA.

13. For the Ministerial Declarations approach to remain current, there must be a robust system for updating declarations when legislation changes in different jurisdictions. The initial Ministerial Declarations on real estate occupations developed in 2007/08 still have to be signed off by all jurisdictions, yet there is already a need to amend the Declarations to take into account legislative change in South Australia.

SUMMARY

14. The REIA contends that real estate practice takes place in a national and international marketplace, not a marketplace defined by State borders. The current system of State and Territory-based licensing, with differing eligibility requirements, is inconsistent and does not adequately provide for labour mobility or consumer protection. Mutual recognition under MRA and TTMRA is a partial solution, made more effective by the Ministerial Declarations on real estate licensing which will come into effect in the near future. However, a preferable system is a national licensing system, underpinned by a harmonisation of real estate legislation, including education and licensing requirements.

15. More dialogue is required with New Zealand regulators to consider how this might impact labour movement between Australia and New Zealand and the application of the TTMRA.

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