

# **Real Estate Institute of New Zealand Incorporated**

## **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 New Zealand (REINZ) is the national professional association for the real estate profession in New Zealand. REINZ also has a statutory role in the licensing and disciplinary functions of the real estate profession. In addition, REINZ is responsible for prescribing the qualifications for the profession, subject to Ministerial approval. The Real Estate Agents Licensing Board is the independent and Government appointed Board responsible in a "judiciary" capacity for the licensing and disciplinary functions.
3. The real estate profession currently has approximately 1,800 real estate licenses, which have an approximate total of 17,500 salesperson and branch managers attached to those licenses. The 1,800 licensees are deemed members of REINZ in accordance with the Real Estate Agents Act 1976, and of the 17,500 11,500 choose to be members of REINZ.
4. REINZ is closely linked with REIA and each of its eight member real estate institutes of the State and Territories of Australia.
5. REINZ will only comment on how the occupational licensing provisions under the TTMRA affects the real estate profession in the New Zealand jurisdiction. New Zealand does have its own occupational licensing regime within the Real Estate Agents Act 1976, separate and not necessarily consistent with those in each State and Territory of Australia.
6. REINZ has not previously participated with a Productivity Commission Review. However, representatives of the Real Estate Agents Licensing Board (REALB) have attended Regulator meetings in Australia over the last decade, at which it has regularly expressed the New Zealand real estate profession's concerns, particularly from a licensing and disciplinary judiciary regulator's perspective.

## **Issues**

### ***Rationale for Mutual Recognition***

7. REINZ concurs totally with REIA's rationale for mutual recognition. Namely, that there is an urgent need for the legislative environment to catch up with the commercial environment in which the real estate profession practices. As REIA states, the real estate market is increasingly globalised in all facets.
8. REINZ maintains there should be not only an Australian nation-wide consistent approach to real estate education/qualification and licensing requirements, but one that includes New Zealand, allowing for the ease of movement of real estate professionals between jurisdictions, which in itself minimizes the time and cost involved, for all parties, without compromising the consumer protections.

### ***Difficulties with Operation of Mutual Recognition***

9. There are however considerable difficulties with the operation of the mutual recognition system, as REINZ is observing. These include:
  - a. The scope of the licensing differs from one jurisdiction to another. REIA lists two examples, with which REINZ concurs. In addition, in NSW a real estate professional is not permitted to complete the conveyancing aspects of a residential sale transaction, in particular draft conditions on a sale and purchase agreement. This is the "domain" of the legal profession. In New Zealand there is an express exemption in the Law Practitioners Act (and its succeeding legislation now becoming effective the Lawyers and Conveyancers Act), for real estate practitioners. Therefore REINZ does not believe there is equivalency of occupation between the New Zealand and New South Wales jurisdictions. The REALB agrees, and from 1 September may impose conditions on an applicant from the NSW jurisdiction, to bridge the equivalency of occupation gap.
  - b. As REIA states, the different eligibility for licensing requirements makes the mutual recognition process inconsistent, therefore erodes the structural integrity of mutual recognition. For example, in accordance with the Real Estate Agents Act 1976 in New Zealand for a real estate professional to hold a license they must have not only successfully completed their relevant qualifications, but also worked "primarily and predominantly" in real estate agency activities for the preceding three out of five years, and be a "fit and proper" person to hold a license which is also in the "public's best interest". These "tests" do not apply in some of the jurisdictions. Any national and transnational licensing requirements should become more consistent. All temptations to lower eligibility requirements must be resisted however, or this will undermine the consumer protection elements already existing in the various pieces of legislation in the different jurisdictions.
  - c. Further evidence of eroding the structural integrity of mutual recognition and the underlying spirit and philosophy of mutual recognition includes those real estate practitioners who "shop and hop" for the least and easiest requirements of all the jurisdictions, to achieve the education qualification and licensing requirements. They then apply, in New Zealand's case, under the TTMR Act. REINZ concurs with the REIA submission that this is all "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. This abuse of mutual recognition has been facilitated by regulators not consistently verifying residential and/or business addresses of license applicants. Nor do those regulators necessarily apply (or sufficiently diligently) the “fit and proper person” test “in the best interests of the public”. Processes between the Regulators must be set up to achieve better and more consistent application of the character test requirements.

New Zealand is experiencing for the last three years approximately 200 per year “shopping and hopping”.

- d. The lack of equivalency of education qualification requirements, which particularly addresses the gaps of consumer protection and other legislation particularly relevant for real estate professions. Whilst the applicants under TTMRA in New Zealand may receive conditions to address lack of equivalency of occupation imposed by the REALB to be met within six months of their application from 1 September 2008, this does not address their knowledge of the legislation that REINZ, as the prescriber of the real estate profession's qualifications, believes are prerequisites to holding a license. Therefore the licensing regulator must also have the capacity to impose conditions on an applicant to address this gap of requisite knowledge.
- e. The appeal mechanisms under the TTMRA (appeals from New Zealand registration bodies are to the Trans Tasman Occupations Tribunal) seem ineffective. TEINZ is not aware of any appeals made by a real estate professional applicant. REINZ, in its regulatory “prosecuting” role is frustrated that it does not have any appeal rights against the licensing body, REALB's decisions. Therefore REINZ submits that the “prosecutor” should have appeal rights.

### ***National and Trans Tasman Licensing***

- 10. Since the request for submissions on this review was distributed, REINZ understands and welcomes that the Council of Australian Governments (COAG) agreed at its meeting on 3 July 2008 to a national trade licensing system in the context of a broader national reform framework, with property agents included in the first phase for national licensing. The system is apparently to be endorsed in an intergovernmental agreement (IGA) between jurisdictions by COAG in December 2008. This is encouraging news for Australia, however REINZ is of the view there is much to be gained in accordance with the spirit of the TTMRA, for New Zealand to be included in the consultation and subsequent agreements.
- 11. REINZ understands that in the lead up to the December 2008 IGA, COAG has requested the Business Regulation and Competition Working Group (BRCWG) in consultation with the COAG Skills Recognition Steering Committee to report back to COAG in October 2008 on the development of co-operative legislation across the eight State and Territory jurisdictions for national occupational licensing. REINZ would appreciate the appropriate bodies, including REINZ (and its tertiary education body REINZ Industry Training Organisation), REALB and the appropriate New Zealand Government Ministry Officials and Government Agencies to be involved, to participate. This is with the view of harmonizing licensing and education qualifications (including the policies and procedures for the administration and regulation) of the real estate profession for Australasia.

12. REINZ concurs with REIA that harmonization of national and trans Tasman legislation, including all matters that relate to licensing and education qualifications, provides an excellent opportunity for an efficient national and trans Tasman property market, whilst maintaining consistent consumer protection and a reduction of regulatory burden on individuals and businesses.

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