AUSTRALIAN PROPERTY INSTITUTE INC.

REVIEW OF MUTUAL RECOGNITION SCHEMES

PRODUCTIVITY COMMISSION DRAFT RESEARCH REPORT

SUBMISSION

DECEMBER 2008

As advised in the July 2008 submission to the Productivity Commission by the Australian Property Institute, it does not support mutual recognition arrangements as they currently apply because:-

- it only covers three of the eight States and Territories
- it does not take into account "best practice" through educational and professional experience requirements
- it has the effect of reducing the licensing of the profession to the lowest common denominator
- it has no concern about consumer protection issues through the maintenance of standards

The following comments are offered against relevant Draft Findings and recommendations.

Draft Findings 4.1

The Mutual Recognition Agreement and the Trans-Tasman Mutual Recognition Arrangement appear to have met their main objectives of increasing the mobility of goods and labour around Australia and across the Tasman:

- *In the goods area, the limited evidence available suggests that mutual recognition has led to lower regulatory compliance costs for firms, and has contributed to the expansion of interstate and trans-Tasman trade. However, it has not been possible to quantify the effects of mutual recognition in isolation from other factors.*
- *Increased labour mobility and reduced wage dispersion are consistent with the expected effects of mutual recognition of occupational registration.*

Draft recommendation 5.1

Registration approaches should be reviewed to determine whether 'traditional' registration is the appropriate response to perceived risks to the public or the environment, with a view to reducing the costs of registration where possible and making the approach of all jurisdictions more consistent.

API COMMENT

> Perhaps a review of what happened in the United States of America will suggest that 'traditional' registration and its associated administrative costs is an extremely cheap response to, not perceived, but real risks of not having prudent standards in place.

Draft Finding 5.1

In contrast with the predominant view among stakeholders, coregulation arrangements appear likely to fall within the coverage of the mutual recognition schemes if the elements required for mutual recognition (authorisation under legislation conferred by a local registration authority) are present.

API COMMENT

If co-regulation arrangements fall under the coverage of mutual recognition schemes it would be appropriate to review negative licensing arrangements. An example being the Tasmanian legislation (*Land Valuers Act 2001*) which says***:-***

"***Qualifications required to carry on business as land valuer***

A natural person must not carry on business, or hold himself or herself out, as a land valuer unless he or she has satisfactorily completed an accredited course and has the required practical experience as determined by the Australian Property Institute or any other organisation representing the interests of land valuers in Tasmania"

Draft Recommendation 5.2

The jurisdictions should consider whether the current wording of the mutual recognition legislation reflects their intentions regarding the types of registration covered by the schemes.

Draft Finding 5.2

Although many study participants have raised concerns about variations in occupational standards between jurisdictions, there is very little evidence of harm stemming from these variations.

The Commission would appreciate evidence that either refutes or supports this statement.

API COMMENT

The Australian Property Institute was one of those study participants raising its concerns about variations in occupational standards between jurisdictions in relation to the valuation profession. Indeed, so were the Valuers Registration Board of Queensland, the New Zealand Institute of Valuers, the Land Valuers Licensing Board of Western Australia and the Valuers Registration Board of New Zealand – all affected by mutual recognition.

To suggest that the standards of any single state which has failed to recognize what is happening in Australia and abroad should be the benchmark, is entirely inappropriate.

The profession in Australia, New Zealand and other overseas countries has spent many years raising the academic standards, professional practice standards and continuing professional development requirements. In the global environment in which we should be aiming to compete you will find the standards are continually raised. If the minimum standards that currently apply were to permeate throughout Australia you would find us at odds with bodies such as the Royal Institution of Chartered Surveyors, the Appraisal Institute of Canada, the Hong Kong Institute of Surveyors, the Singapore Institute of Surveyors and Valuers and the Australian Property Institute. The result will be licensing a group out of the local and global marketplace.

It is the professions which have put in place standards that have resulted in there being little "evidence of harm". To support the lowest common denominator as the benchmark

for all other jurisdictions appears to be a slap in the face to those jurisdictions which have recognized the public benefit of ensuring applicable high standards.

To suggest there is very little evidence of harm stemming from these variations not only fails to recognize education and training as a way of raising standards but also fails to recognize the environment in which valuers work. For many years the property market continued to rise and grow. There was a shortage of valuers and lending institutions were primarily concerned "with getting the money out the door". All "sins" were buried. This scenario has completely changed with valuers being made redundant as a result of the significant reduction in the flow of work from lending institutions. It is a time when there are increasing claims against valuers and as a consequence, the cost of and access to professional indemnity insurance will be challenging and mortgagee in possession sales become common.

According to a ministerial media statement issued by the Queensland Premier on 3 December 2008 - "Applications made to Queensland courts for repossession of real estate has increased dramatically in recent months, jumping from 374 from March-June to 606 in the last four months – and while it's not possible to say what the circumstances were in each of these cases, the figures are sobering."

To get an unbiased opinion of valuation standards across the states and territories of Australia it is suggested that approaches be made to Lenders Mortgage Insurers who review valuations from across the country on a daily basis.

Draft recommendation 5.3

The mechanisms through which the Administrative Appeals Tribunal and the Trans-Tasman Occupations Tribunal can be approached to make a declaration on occupational standards should be clarified.

API COMMENT

The mechanism by which a regulator may raise concerns about variations in occupational standards not only needs to be clarified from an Administrative Appeals Tribunal (AAT) / Trans-Tasman Occupations Tribunal (TTOT) perspective, but also by Ministerial councils.

The draft report stated that as a first option regulators should engage in dialogue in an attempt to discover mutual ground. From experience with respect to the valuation profession this does not work.

Unfortunately, as the current legislation is worded, it is not possible to achieve a declaration from the AAT / TTOT that occupations are not equivalent on standards grounds except when dealing with health, safety or environmental pollution issues.

It is understood that any jurisdiction can refer a question about the standard applying in another jurisdiction to a good or the practice of an occupation to the Ministerial council responsible for that good or occupation. A standard can be defined with the agreement of at least two-thirds of the members of a council (excluding those who are not party to the scheme under which a referral is sought), and is then applicable in all participating jurisdictions. If this process is available then unfortunately it is an example of how governments have pushed mutual recognition without appropriate consultation. This should be the most effective avenue in resolving standards issues.

Draft Finding 5.3

An effective process for resolving regulator concerns about significant variations in occupational standards across jurisdictions is required. Potential options include advisory opinions from a Tribunal and a temporary exemption mechanism.

Study participants' views on what an effective process might comprise, including a description of the potential costs and benefits of any proposals, would be appreciated.

API COMMENT

Draft Recommendation 5.4

See comments re Draft Recommendation 5.3

The mutual recognition legislation should be amended to allow criminal record checks. Any amendment would need to be qualified to ensure checks did not unduly slow registration processes.

Feedback on potential approaches to dealing with regulator concerns about criminal record checks would be appreciated.

API COMMENT

The Institute supports the position that regulators should be able to obtain criminal checks. In fact regulators should also be undertaking civil checks such as bankruptcy to ensure applicants are 'fit and proper'.

Draft Recommendation 5.5

The mutual recognition legislation should be amended to make clear the types of condition that registration authorities can impose at the time of registration.

API COMMENT

Mutual recognition is all about entitling a person registered in one jurisdiction to practise an equivalent occupation in another jurisdiction. In reality there should be minimal confusion.

The issue is that jurisdictions with the higher entry standards will continue to look for ways in which to maintain such, which is more important than the lowest common denominator.

Until the mutual recognition participants are prepared to negotiate and resolve such, no amount of legislative change will fix the issues. By participants, the Institute is referring to the relevant licensing bodies and industry associations rather than those in the respective Treasury or Premier Departments as well as within the COAG Unit of Prime Minister and Cabinet. The 'carrot and stick' approach can only go so far.

Draft Finding 5.4

Differences between jurisdictions in the scope of activities covered by licences have the potential to impede mutual recognition and labour mobility. By clarifying equivalence between licences, Ministerial Declarations have gone some way towards resolving this problem. However, agreement on national licensing categories is required to address the potential impediments to labour mobility associated with interjurisdictional licence variations.

Draft Finding 5.5

Legal advice indicates that people who register under mutual recognition can probably not be required to undertake training while holding that registration.

API COMMENT

If a jurisdiction has continuing professional development as one of its mandates to maintain registration, all licensed persons, irrespective of how they got there, should be required to undertake such.

This is another example of “deeming” having no consideration of education or practice standards behind obtaining the licence.

A cynic would say “show me the harm”.

Mutual recognition legislation / regulations should be amended to ensure the requirement for continuing professional development is established nationally. It is in the public interest to ensure that licensed professionals remain up to date with changes / advancements in the areas of their profession.

Draft recommendation 5.1

The mutual recognition legislation should be amended to make it clear that ongoing conditions or requirements for further training and ongoing professional development apply equally to all registered persons within an occupation, including those registered under mutual recognition.

API COMMENT

The API fully supports this recommendation.

Draft recommendation 5.2

The mutual recognition legislation should be amended to define undertakings and provide that they are transferable between jurisdictions.

API COMMENT

Undertakings should be transferable.

However, if there is serious concern about undertakings and or disciplinary action there is a need to ensure a person licensed in one jurisdiction cannot apply for licensing (not under mutual recognition) in another without obtaining a clearance from the original jurisdiction.

This issue is bigger than mutual recognition.

Draft recommendation 5.3

The mutual recognition legislation should be amended to ensure that information on nondisciplinary or remedial action can be shared between jurisdictions.

API COMMENT

Supported – see comments immediately above.

Draft Finding 5.6

Some Australian regulations constrain provision of services to people with very specific characteristics — for example, membership of one Australian professional body. This approach has the potential to create registered occupations in the meaning of mutual recognition.

API COMMENT

Within the report (page 104) the Commission found no instances of harm resulting from a lack of local knowledge. The reality is that local knowledge can play a critical part in the valuation of a property. An example of a market where local knowledge is paramount is the Gold Coast where two tiered markets in property have existed for many years.

Legislation which stipulates that membership of a professional body such as the accounting bodies is required before the provision of some form of service may be more appropriate than some of the licensing regimes in place. They are likely to have national coverage and consistently high standards of education, practice and ethics. The issue there is to have one body rather than three. The accounting bodies should have MOU's or Reciprocity Agreements in place to cover Trans Tasman membership.
Membership of a professional body is not the issue, rather the requirement for professional bodies to have minimum standards (such as those of the API) which bind members to provisions of their constitution, bylaws, code of ethics, rules of conduct and practise standards. In addition, there should be a requirement for continuing professional development, complaints handling and disciplinary procedures and a nationally consistent set of education entry and professional experience requirements.

Draft Finding 5.7

Unilateral modification of licence categories or customising of equivalence conditions defeats the purpose of Ministerial Declarations.

API COMMENT

Perhaps such is a reflection of the consultation process.

The following is an extract from the Australian Financial Review (page 17) of 28 November 2008 –

"University of Queensland Business School professor Ken Wiltshire has also questioned whether co-operative federalism under the federal government is a true partnership following Rudd's threat to take over hospitals during last year's election campaign as well as forcing strict targets on states before they receive funding. "The states have thus surrendered their sovereignty and will become just an administrative arm of the commonwealth," he wrote in *The Australian Financial Review* earlier this year. "Using this model legislation will not achieve truly national approaches and will probably result in lowest common denominator standards, especially in education and training and occupational health and safety.""

Draft recommendation 5.4

Consideration should be given to extending the Ministerial declarations to occupations regulated in New Zealand.

API COMMENT

Provided such consultation was with truly affected parties, the API would support the extension of Ministerial declarations.

It should be noted that the Institute does not support the proposed Ministerial Declaration for Property Agents as it encompasses the valuation profession. COAG set in place an initiative to achieve full and effective mutual recognition of selected trade occupations. The initiative was subsequently extended to all vocationally trained registered occupations. The valuation profession is not a vocationally trained occupation, except for satisfying the licensing requirements of New South Wales. The endeavours of all parties should be to raise the standards in New South Wales to an acceptable level, not the other way around. Please see attached correspondence dated 14 August 2008 to COAG Skills Recognition Taskforce.

Draft recommendation 5.5

Relevant New Zealand regulators should be included in consultations around the development of national licensing systems in Australia.

API COMMENT

Most certainly, as national licensing has the potential to commit the same sins as mutual recognition.