

**EXECUTIVE SUMMARY OF**  
**REAL ESTATE INSTITUTE OF AUSTRALIA SUBMISSION**  
**TO PRODUCTIVITY COMMISSION REVIEW OF**  
**NATIONAL COMPETITION ARRANGEMENTS**

**PROPOSAL**

1. The Real Estate Institute of Australia (REIA) proposes that the National Competition Policy (NCP) include further reform by the Queensland Government of Queensland legislation to deregulate commissions of real estate agents, to be consistent with all other States; in order to provide for more flexible service delivery, increased fee competition between agents, higher levels of accountability, and encourage a free market economy in the public interest.

**BACKGROUND**

2. Key elements of the National Competition Policy (NCP) package involve an extensive program to review and, where appropriate, reform legislation restricting competition in areas such as the professions and occupations, and planning and development services. The Treasurer has tasked the Productivity Commission to conduct a review of the NCP and the Commission is to report, inter alia, on opportunities for removing impediments to efficiency and enhancing competition including through possible further legislation review at State and Territory level.

**LEGISLATION REVIEW**

3. The principles guiding legislation review and reform are outlined in the compendium of National Competition Policy Agreements, Second Edition. The guiding principle of legislative review is that legislation should not restrict competition unless it can be demonstrated that the benefits of the restriction to the community as a whole outweigh the costs, and the objectives of the legislation can only be achieved by restricting competition.

4. NCP reviews in all other States except Queensland have concluded that there is insufficient public benefit in continuing to regulate real estate agents commissions. Either there is uniqueness about consumers in Queensland or there is an inconsistency in the NCP review process. This has implications for mutual recognition because a flawed process inhibits broader consistency in legislative frameworks, eg licensing standards.

**ISSUES**

**Previous Reviews of Legislation in QLD**

5. Previous reviews of legislation have concluded that regulated scales of commission, including QLD, should be repealed. All Australian jurisdictions except QLD have now done so.

**Public Interest**

6. The regulatory regime in Australia has transformed rapidly from a climate of regulation to protect industries from competition to a more minimalist approach where

regulation deemed not to be of public benefit has, or is being repealed. The Commonwealth and State Governments are increasingly requiring industries to become more competitive and accountable for their performance. The Hilmer Report advocated that all industries and professions should be exposed to a more competitive environment. The real estate industry should be required to embrace competition reform in the same manner as other industries and professions.

### **Outcomes in Other States**

7. It is significant that no evidence can be found that any regulatory body in any of the States that have deregulated has received any substantiated consumer complaint relating to unfair practices in the setting of agreed fees and services.

### **Benefit to Consumers**

8. The major benefit of deregulation of commissions is that it provides an opportunity for the industry to become more price competitive and to deliver flexible services appropriate to the needs of individual clients. The repeal of regulated maximum scales of commission appears to be consistent with the objectives of national competition policy.

9. There appears to be no reason why any government should protect the income structures of real estate agents when other occupations and professions do not receive similar protection. Strong competition between agents operating in finite markets should contain any possible fee increases. The real benefit of fee deregulation is to give consumers a proper choice with the increased likelihood of improving service due to a competitive market place.

### **Benefit to Real Estate Agents**

10. Real estate commissions for the sale of residential property in Queensland have not been adjusted for 18 years – i.e. not since April 1986 when the present maximum scale was set at 5% of the first \$18,000 (hereafter referred to as the **base commission**) and 2 ½% of the balance above \$18,000. Although increases in median property values have exceeded CPI increases in every year between 1986 and 2003 with the exception of 1987, the failure to index the base amount has had a negative impact on agents operating at the lower end of the market as their earning capacity has fallen in real terms.

## **SUMMARY**

11. All methods of setting maximum regulated commission scales are arbitrary in nature and the regulated maximum fees scale soon become the scale. Marketplace competition together with better consumer education and information programs and disclosure by agents is more likely to result in better services to consumers and pricing which is consistent with the quality of those services.

Prepared by:

Secretariat  
Real Estate Institute of Australia

10 June 2004

**REAL ESTATE INSTITUTE OF AUSTRALIA SUBMISSION**  
**TO PRODUCTIVITY COMMISSION REVIEW OF**  
**NATIONAL COMPETITION ARRANGEMENTS**

**PROPOSAL**

1. The Real Estate Institute of Australia (REIA) proposes that the National Competition Policy (NCP) include further reform by the Queensland Government of Queensland legislation to deregulate commissions of real estate agents, to be consistent with all other States; in order to provide for more flexible service delivery, increased fee competition between agents, higher levels of accountability, and encourage a free market economy in the public interest.

**BACKGROUND**

2. NCP includes a coordinated and systematic set of measures aimed at encouraging greater competition across large parts of the economy. Features of the NCP include dismantling of trade barriers, deregulation of the financial system, changes to labour market regulations and taxation reform. Key elements of the NCP package involve an extensive program to review and, where appropriate, reform legislation restricting competition in areas such as the professions and occupations, and planning and development services.

3. The NCP reforms are predicated on improving the competitiveness and flexibility of the Australian economy in a way which also meets 'public interest' considerations. The Competition Principles Agreement establishes common principles agreed by governments in relation to NCP reform elements.

4. The Treasurer has tasked the Productivity Commission to conduct a review of the NCP and the Commission is to report, inter alia, on opportunities for removing impediments to efficiency and enhancing competition including through possible further legislation review at State and Territory level.

5. The Commission Issues Paper of April 2004 highlighted that effects of reforms indicate price, service accessibility and quality benefits have accompanied the removal of legislative restrictions on competition in a range of areas (for example, following the deregulation of retail trading hours in many areas). In the real estate profession, seven of eight States and Territories have deregulated agent's commission. The exception is Queensland where maximum commission rates for the sale of residential property have been regulated since 1922.

**LEGISLATION REVIEW**

6. The principles guiding legislation review and reform are outlined in the compendium of National Competition Policy Agreements, Second Edition. The guiding principle of legislative review is that legislation should not restrict

competition unless it can be demonstrated that the benefits of the restriction to the community as a whole outweigh the costs, and the objectives of the legislation can only be achieved by restricting competition.

7. The Queensland Government; on the recommendation of the Auctioneers and Agents Act 1971 Review Committee, retained regulation of residential real property commissions, whilst it conducted an education and community information campaign to remove or diminish the existing culture of agents refusing to negotiate fees. The campaign commenced on the commencement of the Act, and is ongoing. A review committee was established to undertake a Review of Commissions in response to the original Review Committee's recommendations. The review commenced in April 2002. Notwithstanding, the Property Agents and Motor Dealers Act 2000 replaced the Auctioneers and Agents Act 1971. There were amendments to Property Agents and Motor Dealers Regulation 2001 to give effect to deregulation of motor dealing and auctioneering commissions and buyers' premiums were approved by the Governor-in-Council on 20 November 2003 and gazetted on 21 November 2003.

## **DEREGULATION**

### **Previous Reviews of Legislation in Queensland**

8. The Real Estate Industry Review Committee 1988 considered a proposal that commission rates be deregulated. The Committee recommended deregulation of commission for "commercial" transactions but that a resulted maximum scale be retained for residential sales, at least until the public could become more aware of the implications of deregulation. It did not propose how this might be achieved but it did recommend that the maximum scale be increased.

9. The Auctioneers and Agents Act Review Committee in its 1992 Report stated that it was outside its powers to make a recommendation in respect of the commission rates proposed in the Report of the Real Estate Industry Review Committee 1988. However, it was supportive of a recommendation that the residential property scale be reviewed regularly at least once every 12 months or two years.

10. Also in 1992, the real estate industry participated in an inquiry by the Prices Surveillance Authority into real estate agents fees relating to residential property transactions. The Authority recommended that all State and Territory Governments repeal their regulated scales of commission. All Australian jurisdictions except Queensland have now done so. Why is Queensland different – is there truly national level competition review?

11. The sale or leasing of rural income producing properties is treated in exactly the same manner as standard residential transactions. In practice it is difficult to comprehend why such transactions are not considered to be of a commercial nature. (Commissions for the sale of commercial properties have been deregulated since 1989).

12. Under the previous legislation (*The Auctioneers and Agents Act 1971*) the sale of multiple lots in a community title scheme on behalf of the original owner i.e. the developer/builder were considered to be commercial transactions where the commission was not subject to regulation. The *Property Agents and Motor Dealers*

*Act 2000* however treats them as normal residential transactions that are subject to regulation.

### **Public Interest**

13. The majority of the real estate industry accepts that the reliance on a regulated commission scale has been a soft option that might not be in the public interest. It also accepts that it needs to be more accountable for its service delivery, and to be more transparent in the fees charged by individual enterprises for those services. The regulatory regime in Australia has transformed rapidly from a climate of regulation to protect industries from competition to a more minimalist approach where regulation deemed not to be of public benefit has, or is being repealed.

14. The Commonwealth and State Governments are increasingly requiring industries to become more competitive and accountable for their performance. The Hilmer Report advocated that all industries and professions should be exposed to a more competitive environment. The real estate industry should be required to embrace competition reform in the same manner as other industries and professions.

### **Improving Service**

15. The regulatory environment has done little to encourage real estate agents to look for more innovative ways of conducting their operations and it has reduced the incentive to provide new or better services.

16. Regulators appear to be concerned that the cost of real estate agents services will rise. Agents on the other hand are concerned that they will reduce. The difficulty with those perceptions is that they are not attached to any performance measures and there is therefore no way to assess the validity of claim and counter claim. It must be expected that there will be some movement in price in relation to individual transaction - that is the desired outcome of establishing competitive markets.

### **Outcomes in Other States**

17. The experience in jurisdictions that have deregulated commissions suggests that there is unlikely to be any uniform increase or decrease in the fees that agents charge for their services. It is understood that the Estate Agents Council in Victoria conducted surveys of vendors and real estate agents to ascertain the impact of deregulation. These reports have not been made available publicly but they may be available to Government.

18. The Real Estate Institute of Victoria has reported that since deregulation in Victoria:

- a. The main reasons for choosing an agent were reputation and professionalism.
- b. Only six percent of vendors consider that commission and fees were the most important factor in choosing an agent.
- c. Nearly 80% of vendors believed that their agent's overall performance was good.

- d. Over 40% of agents believe that their range of services had increased.

19. The amount of any increase in fees is understood to have been modest. Since Victorian commission rates were the lowest in Australia prior to deregulation, it is not surprising that commission may have increased slightly especially if improved services are being offered.

20. The Real Estate Institute of Victoria conducted its own survey of agents to determine the effects of deregulation on agents. The key findings were:

- a. Deregulation has had the effect of making metropolitan agents more aware of the need to negotiate fees in exchange for better and more professional service.
- b. The changes have not been easy with many agents having to alter their philosophy and retrain staff especially in negotiating fees and clearly defining the services to be provided.
- c. Fee negotiation and fee for service have highlighted agents' improved performance.
- d. Generally speaking, agents are offering a higher level of service for the fees they are now negotiating.
- e. Clients are seeking more information, more feedback, better communication and more accountability from their agents.
- f. Better informed clients are becoming more demanding and more critical of the service provided by agents.
- g. Most agents do not believe that fees will rise in a buoyant market because increased competition will still have an impact with the public shopping around for the best deal.

21. Western Australia deregulated commissions in 1998. Prior to deregulation research conducted on a national basis showed that 90% of sellers were more concerned with getting the right service from a professional, reputable agent than with simply agreeing to the lowest price.

22. It is significant that no evidence can be found that any regulatory body in any of the States that have deregulated has received any substantiated consumer complaint relating to unfair practices in the setting of agreed fees and services.

### **Benefit to Consumers**

23. The major benefit of deregulation of commissions is that it provides an opportunity for the industry to become more price competitive and to deliver flexible services appropriate to the needs of individual clients. The repeal of regulated maximum scales of commission appears to be consistent with the objectives of national competition policy.

24. There appears to be no reason why any government should protect the income structures of real estate agents when other occupations and professions do not receive similar protection. Strong competition between agents operating in finite markets should contain any possible fee increases.

25. Unless there is something extraordinary about the real estate sector and consumers in Queensland, market forces should ensure a realistic balance of supply and demand in the setting of fees and charges – just as it does in other sectors of business. Real estate agents operating in a deregulated environment would have to become more transparent in their fee structures knowing that they could be called upon to justify their fees.

26. The real benefit of fee deregulation is to give consumers a proper choice. Rather than having all consumers subject to the same charges as is inevitably the case under a statutory schedule, consumers would be able to decide on the level of service required by them for their individual needs. The government can best protect consumers by:

- a. ensuring that there is a competitive environment.
- b. directly providing and ensuring that the real estate industry also provides better consumer education and information.
- c. requiring statutory disclosure by agents of the services agents intend to provide and the price to be charged for those services.
- d. ensuring that there is an efficient and independent mechanism available to determine the appropriateness of fees in particular circumstances.

### **Benefit to Real Estate Agents**

27. Real estate commissions for the sale of residential property in Queensland have not been adjusted for 18 years – i.e. not since April 1986 when the present maximum scale was set at 5% of the first \$18,000 (hereafter referred to as the **base commission**) and 2 ½% of the balance above \$18,000. Although increases in median property values have exceeded CPI increases in every year between 1986 and 2003 with the exception of 1987, the failure to index the base amount has had a negative impact on agents operating at the lower end of the market as their earning capacity has fallen in real terms.

28. Across all real estate markets, commissions have fallen as a percentage of the sale price despite increases in property values. The most apparent effects are that agents operating in predominantly the lower end of the market:

- a. do not have the economic benefit resulting from a high volume of sales nor can they compensate for low returns by selling higher value properties; and
- b. will be reluctant to negotiate commissions much below the regulated maximum available to them.

In any case, human nature is such that businesses, including real estate, will generally seek to charge at or very close to the maximum proposed under any published or recommended price structure.

29. As a general rule of thumb, 20% of agents write 80% of all business. The majority of these agents can be expected to operate predominantly in middle and upper markets and the sellers of those properties have a greater prospect of being able

to negotiate commissions with their agents. This is consistent with observations made by the QLD Office of Fair Trading that only 20% of real estate agents negotiate commissions.

30. The difficulty for real estate agents operating at the lower end of the market is that the base commission has failed to keep pace with CPI increases and the overall commission has fallen as a percentage of the sale price regardless of increases in property values. The situation for them is exacerbated when regard is had to the significant growth in expenses during this same period. For example:

- a. licence fees for real estate agents have increased from \$260 in 1986 to \$373 in 2003 (43% increase)
- b. insurance premiums have increased 60% in the last two years alone.
- c. employment costs have risen due to the introduction of the Property Sales Award in 1997.

31. Prior to 1986, commissions were reviewed infrequently during the period 1971 through 1985 and adjusted only by nominal amounts. Many people wrongly assume that the entire commission goes to one person. In many circumstances the commission can be divided four ways: the listing agent, the listing salesperson, a conjunctional agent and a conjunctional salesperson. Franchise fees can also influence the actual dividing up of the commission.

32. Real estate is a business with many expenses and without the luxury of a guaranteed regular income. It is also an industry that has its ups and downs. Interest rates, economic confidence, and the concessionary benefits available to first home buyers and investors can have a major impact on the market.

33. The real estate industry has been urging successive governments to address the issue of commissions for many years (see Annex A). Obstacles to effectively dealing with the matter have generally been caused by:

- a. a lack of understanding about what services real estate agents perform in selling, managing or renting property;
- b. the absence of information about the basis on which the *ad valorem scale* was originally calculated;
- c. differing views among all stakeholders about whether the present scale provides an adequate return for effort;
- d. the impossibility of setting a scale that is fair and equitable in every circumstance;
- e. the incorrect assumption that commissions rise in real terms as property values increase;
- f. perceptions that no adjustment is necessary when economic conditions are strong or that the community cannot bear an increase when economic conditions are weak;
- g. concern among stakeholders about the possible impact of deregulation eg industry's fear that commissions might fall in real terms and politician's fear that commissions might rise especially in the lower end of the market; and
- h. political considerations;



34. The industry today almost universally regards the present scale as being inappropriate principally because the return to agents as a percentage of the sale price has fallen steadily since 1986 despite increases in property values (see Annex B).

35. Both consumers and the industry have come to regard the maximum scale as the norm mainly because the scale is set by Government and commissions generally remain “fixed” regardless of the state of the market. Consequently, attempts by the Real Estate Institute of Queensland and Government to encourage price competition and delivery of value added services have not generally been successful. This phenomenon exists partly because the scale is set by Government. Agents argue that they cannot be profitable on less than this scale and consumers have little negotiating flexibility because an artificial but sanctioned benchmark exists.

### **SUMMARY**

36. Regulation of maximum commission rates does not lead to price competition nor the delivery of value added services. Independent assessments by bodies such as the Prices Surveillance Authority have demonstrated that the regulation of commissions has had a detrimental effect on consumers.

37. All methods of setting maximum regulated commission scales are arbitrary in nature and the regulated maximum fees scale soon become the scale. Marketplace competition together with better consumer education and information programs and disclosure by agents is more likely to result in better services to consumers and pricing which is consistent with the quality of those services.

Prepared by:

Secretariat  
Real Estate Institute of Australia

10 June 2004

Annexes:

- A. Commission Reviews 1971-2004
- B. Regulation of Present Commission System

### **COMMISSION REVIEWS 1971 – 2004**

- 1971 *Auctioneers and Agents Act 1971* introduced.  
Commission rate for all sales set at 5% of the first \$5,000 plus 2.5% of the balance.
- 1975 Commission rate for all sales set at 5% of the first \$8,000 plus 2.5% of the balance.
- 1977 Commission rate for all sales increased to 5% of the first \$10,000 plus 2.5% of the balance.
- 1981 the National Party Government through the Attorney-General Neville Harper proposed to de-regulate real estate commissions. The Institute strongly opposed deregulation and sought an increase in the maximum regulated scale.
- 1984 Price Waterhouse Associates appointed to investigate average real estate past and present profitability. Study concluded that:
- Increases in property values do not result in parallel increases in earnings.
  - The effective return to agencies will continue to decrease as property values increase. Commission growth will lag behind both property value growth and CPI growth.
  - Indexing the base level of the commission structure i.e. \$10,000 set in 1977 would be one way of maintaining agency relativities. (The indexed value was \$17,960).
- 1986 Commission rate for residential sales increased to 5% of the first \$18,000 plus 2.5% of the balance.
- 1989 Commissions on commercial transactions deregulated.
- 1991 Auctioneers and Agents Review Committee (the Overett Committee) submits recommendations but fails to address commissions which it regarded as outside of its terms of reference.  
The Queensland Government did not act on this report.
- 1992 Prices Surveillance Authority recommends that governments deregulate commissions. (All States except Queensland have since deregulated).
- 1996 A survey of members showed that 52% favoured deregulation of commissions. Institute adopts policy that residential commission rates should be deregulated. Institute makes submission in context of the rewrite of the *Auctioneers and Agents Act 1971* that commissions be deregulated.
- 1997 Board reconfirms deregulation policy.  
Attorney-General Denver Beanland introduced *Property Agents and Motor Dealers Bill 1997* (all commissions to be deregulated).  
Bill defeated by Labour with the support of the Independent member.
- 1998 Institute makes a submission to the Real Estate Industry Review Committee (the Hoare Committee).  
Hoare Committee recommended:
- commission rates for non-residential property transactions be deregulated.
  - maximum commission rates for residential sales be retained and set at 5% on the first \$24,000, 2.5% on any excess up to \$60,000. From \$60,000 to \$150,000 a flat rate of 3.5% would apply and on any excess above \$150,000 and 2.5% on any amount above \$150,000.
  - the various thresholds be reviewed according to market forces prevailing from time to time, but in any event not less than every two years.

- The Queensland Government did not act on this report.
- 2000 *Property Agents and Motor Dealers Act* introduced.
- 2002 Review of Act and commissions commences.
- 2003 Government rejects deregulation and orders further review in 12 months.
- 2004 Government announces review in March 2004.

### **REGULATION OF PRESENT COMMISSION SYSTEM**

#### **BRISBANE Local Government Area Historical Median House Price 1970-1984**

Year	Median Sale	Commission \$	Commission %
1970	\$9,900	372.5	3.76
1971	\$11,500	412.5	3.59
1972	\$14,000	475.0	3.39
1973	\$20,000	625.0	3.13
1974	\$22,095	677.4	3.07
1975	\$24,925	748.1	3.00
1976	\$27,500	812.5	2.95
1977	\$29,500	987.5	3.35
1978	\$30,500	1012.5	3.32
1979	\$32,000	1050.0	3.28
1980	\$35,450	1136.3	3.21
1981	\$46,000	1400.0	3.04
1982	\$55,000	1625.0	2.95
1983	\$57,000	1675.0	2.94
1984	\$60,500	1762.5	2.91

Table 1 – Commission as a percentage of median house prices 1970-1984

Year	Index	% change	Base value
1970	18.4		\$5000.00
1971	19.7	7.07	\$5,353.26
1972	20.5	4.06	\$5,570.65
1973	23.4	14.15	\$6,358.70
1974	27	15.38	\$7,336.96
1975	30.8	14.07	\$8,369.57
1976	35.3	14.61	\$9,592.39
1977	38.3		\$10,000.00
1978	41.8	9.14	\$10,913.84
1979	45.4	8.61	\$11,853.79
1980	49.6	9.25	\$12,950.39
1981	55.2	11.29	\$14,412.53
1982	61.2	10.87	\$15,979.11
1983	66.2	8.17	\$17,284.60
1984	68.5	3.47	\$17,885.12

Table 2 – Base value 1970-1984 indexed by CPI

Price Waterhouse Associates confirmed that real estate agents in 1984 were in substantially worse positions than their 1977 counterparts. They calculated that 5% of the \$10,000 (\$500) in 1977 was equivalent to \$894 in 1984 dollars. The Government of the day accepted that proposition and adjusted the scale to 5% of the first \$18,000 (\$900) in 1986.

This same pattern has been repeated in the period 1986 to 2004.

Commissions as a percentage of the median sale price have dropped from 3.2% in 1986 to 2.65% in 2003.