



## **REIA SUBMISSION TO THE PRODUCTIVITY COMMISSION ON PERFORMANCE BENCHMARKING OF AUSTRALIAN BUSINESS REGULATION**

### **BACKGROUND**

1. To assist the Council of Australian Governments (COAG) to implement its in-principle decision to adopt a common framework for benchmarking, measuring and reporting on the regulatory burden on business, the Commonwealth Government has directed the Productivity Commission to undertake a study on performance indicators and reporting frameworks across all levels of government. The Productivity Commission has published a discussion paper and called for responses by 29 December 2006.
2. The Real Estate Institute of Australia (REIA) is the peak national professional association for the real estate industry in Australia. The REIA has eight members, comprised of the State and Territory Real Estate Institutes, through which about 80% of real estate agencies are collectively represented. The real estate sector is dominated by small businesses with 73% of agencies employing nine people or less. The REIA has previously provided a submission in response to the issues paper on Performance Benchmarking of Australian Business Regulation and has attended a Productivity Commission Roundtable held to consider the discussion paper.

### **PURPOSE**

3. The REIA's submission provides a response to the Productivity Commission's Discussion Paper on Performance Benchmarking of Australian Business Regulation.

### **ISSUES**

4. Australia's federated political structure has resulted in overlapping and unnecessary regulation at the State, Territory and Federal level. With nine jurisdictions legislating in the area of real estate practice and property law (including property ownership and transfer), there are substantive differences between cross-jurisdictional regulatory requirements, compliance procedures and the treatment of persons/businesses found to be in breach of regulations. An overview of the legislative differences relating to real estate practice across the jurisdictions is provided at Attachment 1. This is exacerbated with a tenth jurisdiction including New Zealand.

5. In order to address this situation, a multi-government approach to identifying and removing inconsistencies across the various jurisdictions is required. While some progress may be forthcoming in the areas of training and licensing as a result of the recent cornerstone agreement by COAG on mutual recognition, there is much more to be done in all areas of regulation affecting business practices generally, and real estate business specifically.

6. The REIA supports COAG's in-principle decision to adopt a common framework for benchmarking, measuring and reporting on the regulatory burden affecting business across Australia. Such an approach will lay the foundation for identifying areas of inconsistency, identifying sensible minimum regulatory requirements and implementing processes to achieve nationally consistent business regulation.

7. The REIA provides comment on the Productivity Commission's discussion paper in the sections below.

## **THE DISCUSSION PAPER**

### **Background to Benchmarking Regulatory Burdens**

8. The main purpose of benchmarking the regulatory burden facing businesses is to quantify and qualify the overall level of regulation evident within each jurisdiction and to establish an objective basis for cross-jurisdictional comparison. In doing so, it will also be possible to compare various elements of the regulatory environment in different jurisdictions, enabling the identification of areas of inconsistency, which are likely to add significant costs to businesses when considering cross-boarder trade and competition. In addition, the benchmarking process should aim to standardise regulatory definitions across all Australian jurisdictions to aid meaningful comparison and business understanding.

9. The REIA supports the identification of unnecessary cost burdens, particularly those impacting on small businesses. Ultimately, the benchmarking process should aim to enable jurisdictional policy makers to identify sensible minimum regulatory requirements (or best practice standards) that could be applied on a nationally consistent basis and to underpin a co-operative negotiating process through which each jurisdiction can move towards this goal. Benchmarking will also play an important on-going role in monitoring regulation 'creep' and the impact of regulatory changes over time.

10. If published, the preliminary outcomes of the process will allow businesses to better assess and compare the regulatory regimes in different jurisdictions, which should act to introduce a level of competition between jurisdictions for the establishment of new businesses and the retention of existing businesses. Inherent competition brought about by greater transparency will add further pressure for jurisdictions to achieve a nationally consistent, minimum-regulation environment.

11. While the REIA agrees with the Productivity Commission that only the administrative compliance burden of regulations can be benchmarked in this exercise (as opposed to the broader economic costs or the regulatory costs applicable to individual industries), the REIA requests that regulatory unit costs (in dollar terms) be published in addition to any relative measure that is available. Unit costs will allow industry bodies to follow up on the outcomes of the benchmarking report and estimate the impact of unnecessary regulation on their own sectors of concern. This information will be useful in lobbying to remove problem regulations or make regimes nationally consistent. Various Australian Governments are also likely to find unit cost information useful when considering the impact of making requested changes.

### **Benchmarking Regulatory Compliance Costs**

12. As suggested in the REIA's response to the Productivity Commission's issues paper, it is necessary to break down the benchmarking effort into specific categories generally affecting all businesses. The REIA supports the proposal in the discussion paper to model this breakdown on:

- a. becoming and being a business;
- b. doing business; and
- c. doing business interstate.

13. In line with the REIA's previous submission, it would also be fitting to include regulations relating to 'ceasing to be a business' within the category of 'becoming and being a business'. The administrative burden associated with ceasing to be a business has important impacts in terms of the costs involved in winding up a failed business and can result in lengthy delays preventing otherwise tenacious entrepreneurs recommencing business activities.

### **Which Regulations or Regulatory Areas should be Benchmarked?**

14. The regulatory burden on real estate businesses comprises the full range of general small business regulatory requirements as well as real estate specific requirements. In a general sense, the regulations applicable to most Australian small businesses fall into one of the following six categories:

- a. taxation (e.g. business registration, GST, payroll tax, company tax, individual tax, property taxes);
- b. industrial Relations (e.g. WorkChoices, workers compensation, privacy, OH&S);
- c. consumer Protection (e.g. Professional licensing, trade regulation, competition policy, privacy);
- d. investor Protection (e.g. financial services regulation);
- e. environmental Protection (e.g. EPBC, pollution); and
- f. social Planning (e.g. building standards, zoning).

15. While the REIA supports the benchmarking of all regulations affecting Australian businesses, some regulatory areas of specific concern to the REIA include:

- a. professional licensing (real estate agent licensing);
- b. building regulation;
- c. development assessment arrangements;
- d. property law (ownership and title including transfer);
- e. property taxation (including stamp duties and land taxes);
- f. the maintenance and operation of trust accounts;
- g. privacy;
- h. OH&S;
- i. industrial relations;
- j. special property disclosures (e.g. energy efficiency, water efficiency, presence of asbestos);
- k. foreign investment guidelines; and
- l. consumer protection.

16. Although each matter may be considered a reasonable requirement for a business operating in the Australian business environment, cumulatively, the paperwork and record-keeping associated with compliance with a plethora of taxation and workplace legislation can be burdensome and affect profitability of small businesses. This is particularly the case in businesses that are not large enough to employ an accountant or human resource manager on staff and rely either on the services of less-qualified book-keepers or other administrative staff, or on outsourcing these responsibilities to consultants. For example, this occurs across the real estate industry, where about 39% of real estate businesses employ four people or less and 73% employ nine people or less.

### **Benchmarking the Regulatory Environment**

17. The overall regulatory burden must ultimately be measured in terms of businesses costs and lost opportunities, including:

- a. the direct financial costs of adhering to regulations (i.e. fees, taxes, charges);
- b. the indirect financial costs of adhering to regulations (i.e. time spent filling out forms, reading material or obtaining necessary information); and
- c. lost business opportunities (i.e. restrictions on trade, risk related uncertainties, additional regulatory costs associated with participating in differently regulated markets, lack of time to participate in other markets due to time spent in office).

18. Objective and repeatable methodologies must be developed to ensure that useful comparisons may take place now, and in the future, in a manner which facilitates analysis of the regulatory burden over time. While it may be argued that different jurisdictions have different regulatory requirements, in a general sense, unnecessary cost burdens should become apparent where there is an absence of target regulations in a particular jurisdiction, yet there is no apparent detrimental impact on the areas for which the regulation has been imposed in other jurisdictions.

19. The REIA provides further comment on the benchmarking of ‘becoming and being a business’, ‘doing business’ and ‘doing business interstate’ below.

### **Becoming and Being a Business**

20. The REIA supports the Productivity Commission’s proposal to include the following business regulations relating to ‘*becoming and being a business*’ in the initial benchmarking effort:

- a. licences, permits and registrations;
- b. occupational health and safety;
- c. tax regulation;
- d. personal property securities;
- e. privacy regulations; and
- f. financial and corporate regulation.

21. Each of these areas impact on the majority of Australian businesses, either directly or indirectly. The REIA has an obvious particular interest in aspects of ‘licences, permits and registrations’ as they apply to property services, including the licensing of real estate agents, agencies and other property professionals. The REIA is concerned that there are eight State and Territory based licensing regimes covering real estate agents in Australia (as illustrated in Attachment 1) which all appear to have the same regulatory objectives of providing consumer protection and a mechanism through which to regulate real estate practice, including the imposition of penalties where regulatory breaches have occurred.

22. Given that the REIA has already produced a matrix illustrating the key differences in real estate licensing across Australia, the REIA recommends that the Productivity Commission further this work by benchmarking the licensing regime across the eight State and Territory jurisdictions against national consistency. The real estate licensing regime also has major implications for conducting interstate real estate transactions, and thus this issue is more fully addressed in the relevant section to follow. The REIA would be keen to assist the Productivity Commission in selecting a range of indicators for benchmarking real estate licensing.

23. Another particular concern held by the REIA relates to privacy legislation. In addition to the Commonwealth Privacy Act 1988, various State and Territory jurisdictions have also enacted privacy regimes, which generally apply to Government agencies. Inconsistencies in the application of these laws have led to a situation wherein real estate valuers are subject to differing regulatory regimes when attempting to access data relating to recent property sales from, for instance, local government authorities. Restrictions on access to State and Local property information varies between States and Territories. Valuers are able to obtain this information from local councils in a timely fashion in some jurisdictions, while in others they are not.

24. The REIA is prepared to supply the Productivity Commission with information concerning the impact of the privacy regime on real estate agents and valuers upon request. If the Productivity Commission intends to pursue this issue as part of the benchmarking process, due regard should be given to the recent privacy review under taken by the Commonwealth Privacy Commissioner and the current inquiry being undertaken by the Australian Law Reform Commission. Further, the REIA would suggest that privacy issues would be better dealt with under the section of ‘doing business’.

25. Business taxation, including property taxation, is a major concern across all Australian businesses. Property taxes levied by the States and Territories include:

- a. taxes levied on the ownership of immovable property, including land taxes, municipal rates, metropolitan improvement rates and contributions to fire brigades;
- b. stamp duties on conveyances, including stamp duties payable on the transfer of land and buildings and stamp duties on mortgages.
- c. taxes on insurances paid via insurance companies.

26. In addition, the Commonwealth also imposes capital gains tax on investment properties. Owner occupied residential property is exempt from this tax. Notwithstanding the differing levels of property taxation across the States and Territories and the fact that property taxes are inefficient taxes that result in economic penalties being applied to businesses obtaining or moving premises, the REIA is concerned with the differing methods by which these taxes are calculated and applied across Australia.

27. The various methods currently utilised by the States and Territories to calculate land taxes and stamp duties on property conveyances are illustrated in Annex A and Annex B respectively. It is clearly apparent that there are major differences in tax free thresholds, number of taxation bands and even the basis for calculating the taxation rate (e.g. in the case of stamp duty in the Northern Territory) across the various jurisdictions. A harmonious approach to this problem is required such that businesses (or residential land owners for that matter) are more easily able to calculate the amount of tax to be applied to their property purchase or holding in advance of a property purchase. Inclusion of property taxes in the benchmarking exercise will enable the identification of ‘best practice’ property taxations that is the least administratively onerous on those to whom the taxes are applied.

28. The proposed indicators outlined in Table 4.2 of the discussion paper appear reasonable, but could be improved when applied to known specific regulatory areas. For instance, when considered in the context of real estate licensing, it would also be of interest to compare the number of separate professional classes (e.g. real estate agent, auctioneer, stock and station agent) that are subject to the licensing regime. Other obligations, such as continuing professional development, and the costs associated with maintaining a licence could also be considered.

29. The REIA would welcome further consultation and involvement in assisting the Productivity commission to design a suitable assessment process for benchmarking any area of specific concern to real estate or small business more generally.

## Doing Business

30. The REIA agrees with the Productivity Commission's assertion that the planning approvals process is one of the key issues of concern to the majority of Australian businesses. The complexity and inconsistency of development approval processes both across and within all Australian jurisdictions results in unnecessary delays and uncertainty in the business environment – particularly for businesses wishing to expand their activities.

31. Development applications are subject to both State (or Territory) approval processes as well as those of local governments, which often impose specific conditions that are applicable only in their locality or only for particular development applications. Local government approval processes are also notoriously subject to local politics and lobby groups which may be fundamentally 'anti-development'. In addition, development applications are often subject to external processes or regulations such as those relating to native vegetation legislation or catchment plans.

32. Overall, the current development approval regime results in uncertainty and lengthy delays, often leading to overwhelming administrative compliance costs or capital holding costs that undermine the viability of the proposed business investment. Business opportunities may be lost which would otherwise benefit the economy and community.

33. As the Productivity Commission is no doubt aware, there is a housing affordability crisis affecting potential home buyers Australia wide. Figures released by the REIA in the September 2006 *Home Loan Affordability Report*, indicate that Australian families now require more than one third of family income (33.8%) to pay an average home loan. This represents the worst quarterly result for over 25 years, aside from an 18 month period from March 1989 to September 1990 (in which commercial home loan interest rates peaked at 17% - source Reserve Bank of Australia). In the current low interest rate environment, it is clear that the affordability crisis has been brought about by rapidly rising real estate prices which have more than doubled in most capital cities in the past 7 years.

34. The housing affordability debate has now been going on for some time. While it could be said that there is some disagreement across various stakeholder groups with regard to issues affecting the *demand* for housing (changing demographics, wages, taxes, grants etc), it is clear that there is broad agreement that a lack of timely *supply* has been a major contributor to the current crisis. One of the key factors influencing the timely supply of available land and construction activity is the development approvals process. Anecdotally, there have been incidences where it has taken over 18 months to obtain an approval for construction of a building addition as simple as a garage attached to an existing home. More complicated development approvals have been known to take several years to assess, particularly if challenged by local lobby groups.

35. In order to assess and benchmark the development approvals process operating across the various jurisdictions, the REIA believes that it will be necessary to utilize a series of ‘reference developments’. These reference developments should include a spectrum of residential, commercial and industrial development applications relating to both new developments and modifications of existing developments to ensure that the full range of applicable regulations may be considered. The Productivity Commission should also have regard for development applications that involve the construction of community infrastructure (such as ports) and transport systems.

36. The indicators and contextual information contained in Tables 5.1 and 5.2 of the discussion paper appear to represent an appropriate basis for assessing development approval processes, but do not overtly consider *holding costs* which may be borne by businesses or developers awaiting development approval. While not actually ‘administrative’, these costs should nonetheless be considered in any assessment of the development process because they arise as a direct result of administrative delays.

37. The benchmarking study should also be mindful to any elements of the development approval process that are not, strictly speaking, part of the regulatory regime. For example, conditional caveats that are attached to local council approvals, such as minimum sustainability requirements, may not relate to any particular written regulation, but may instead reflect particular political views that might be present at the time the application is made. The REIA appreciates that these elements will be difficult to identify (let alone quantify and qualify), but believes that it should be possible to address these issues in terms of ‘stakeholder engagement’, ‘transparency’ and ‘discretion in decision making’.

38. Table 5.2 indicates that the Productivity Commission intends to rely heavily on ‘expert assessment’ to benchmark many areas of interest. Given that the majority available experts are likely to have a background in regulating on behalf of various Australian governments, it may be difficult to avoid engaging *wholly objective* representatives. The Productivity Commission must be mindful to include an appropriate balance of experts from all levels of government and industry sectors (including commercial, residential and industrial). Community views on matters relating to minor development applications (e.g. the erection of a pergola) should also be considered during the benchmarking process.

### **Doing Business Interstate**

39. Small businesses are typically affected by regulatory inconsistency and duplication to a greater degree than larger businesses that may be able to employ specific resources to deal with multiple regulatory regimes.



40. While the REIA supports effective regulation and strong, accountable regulators acting transparently and consistently, the lack of consistency in legislation and regulations across the jurisdictions (and the regulatory spectrum) imposes a significant compliance burden, both in terms of cost and time, on all businesses operating across domestic Australian borders. This is evident in the case of real estate agents. For example, in a cross-border locality such as Canberra-Queanbeyan, Albury-Wodonga, or Gold Coast-Tweed, real estate agents doing business in both jurisdictions are required to hold two separate licences, maintain two registered offices, comply with two separate training and continuing professional development regimes (CPD) and have two separate trust accounts.

41. This situation results in the unnecessary imposition of costs in terms of both time and finances. A real estate agent in Queanbeyan who is licensed to operate in NSW, and who wishes to also sell real estate in greater Canberra-Queanbeyan, is burdened by the following additional costs despite the existence of a mutual recognition scheme:

- a. time and costs to obtain an ACT real estate licence;
- b. time and costs involved in ACT based training and the ongoing CPD program;
- c. additional costs related to advertising the fact that a licence to sell real estate is held in both the ACT and NSW;
- d. costs involved in opening and maintaining a trust account in both the ACT and NSW.
- e. costs involved in maintaining a registered office in both jurisdictions.

42. The ultimate objective of mutual recognition in the area of professional licensing is to allow freer labour mobility between Australian jurisdictions. Mutual recognition should be the basis for the removal of both duplication and inconsistencies. However, each State and Territory has unfortunately made their own interpretation on how mutual recognition is to apply, which often requires additional fees or education for otherwise qualified persons moving between jurisdictions. This undermines the reason for mutual recognition and it simply does not work in the way in which it should.

43. The barriers to mutual recognition of real estate licences and registration largely relate to the variance in specific occupational categories. Current issues include:

- a. In some jurisdictions, there are specific occupational licences which do not exist in other jurisdictions. For example, the State of NSW licences the category 'strata managing agents', which is not recognised in other jurisdictions. It is therefore not possible for an otherwise licensed agent from another jurisdiction to be recognised as a 'strata managing agent' in NSW, even if they are performing the same function elsewhere.
- b. In SA and Victoria, there is no registration process for salespersons, so these people cannot move to another jurisdiction and begin work without having to undertake the training and registration process as if they were newcomers to the industry.

- c. WA does not recognise the registration process of ACT salespersons, and appears not to have a recognition process in place for those licensed or registered in New Zealand.
- d. The requirements for registration and licensing of auctioneers and valuers, in particular, vary significantly around the country, often requiring people in these occupations who move to another jurisdiction to undertake training and registration processes as if they were newcomers to the profession. For example, NSW only recognises valuers from QLD, WA and NZ.

44. While benchmarking against mutual recognition may have some merit, it would be more useful to benchmark the inconsistencies between real estate licensing across the various jurisdictions and then qualify the results of this process in light of the mutual recognition regime. The key question in the qualifying process will be *“to what degree is the mutual recognition process able to address the evident duplication and inconsistencies in real estate licensing and to what degree does the mutual recognition process add costs or delays in its own right?”*.

45. COAG has recognised the current problems with the mutual recognition process and in June 2005 agreed to pursue a truly national approach to apprenticeships and training to help Australia respond to its skills shortages and provide more opportunities for young Australians. COAG is ultimately seeking a system by which all persons in licenced occupations involving certificates and diplomas will be able to move freely around Australia by December 2008 without having to undergo additional testing and registration processes. The COAG Skills Taskforce has agreed that real estate licensing will be considered in its second priority round, commencing early 2007.

46. Although the issue of real estate agent licensing is already being considered by the Standing committee of Consumer Affairs (SCOCA), the various jurisdictions have so far not been able to agree on the basis upon which harmonisation should occur. The REIA has previously provided SCOCA and COAG with suggested solutions to this problem and now believes that the Productivity Commission can play an important role in benchmarking the cross-jurisdictional differences in real estate (and other occupational) licensing to assist COAG in meeting its stated goal. The REIA would be pleased to work with the Productivity Commission to achieve this outcome.

47. Real estate agencies that operate in multiple jurisdictions are also faced with additional compliance costs as a result of needing to adhere to inconsistent property law regimes affecting the registration and transfer of property title. This not only affects real estate agents, but also affects businesses seeking to establish premises in multiple jurisdictions. These businesses are likely to be required to obtain specific legal advice regarding the property transfer from experts located in each jurisdiction, rather than obtaining legal advice from a single in-house source for all transactions.

48. The increasing use of the internet to market property, increasing interstate migration and changing business practices are together resulting in increased incidences of property sales occurring across borders. The Real Estate Institute of Victoria has estimated that up to 98% of properties for sale and 100% of properties for lease are now advertised on the internet in Victoria. As skills shortages are becoming more acute, interstate migration is becoming increasingly important, particularly when suitably skilled overseas migrants cannot be sourced. This is particularly evident at present with increasing numbers of Australian persons migrating to WA to fill labour shortages in the mining sector brought about by the resources boom. Other Australian businesses, which once were localised, are also expanding their market reach across Australia due to improvements in communications and transport infrastructure.

49. Complexity and uncertainty in understanding property law in different jurisdictions can act as a deterrent to businesses operating in multiple jurisdictions, hindering competition and economic expansion. Individual real estate investors are also affected by this situation and often choose to purchase multiple properties in a single jurisdiction where the investor is familiar with the local property regulations rather than deal with more than one set of property laws.

50. The patchwork of regulation affecting real property and real estate practice stands in contrast to the direction of business and workplace reforms, advanced through the National Competition Policy and other mechanisms. Australian Governments should recognise that there are no longer boundaries on the domestic business map and establish a single, nationally consistent system of property law.

51. The REIA also supports the proposed inclusion of building regulation in the cross-jurisdictional benchmarking study. While the Building Code of Australia (BCA) was established to facilitate national consistency, it remains the case that State and Territory Governments may make regulations under the BCA within their own jurisdictions. Further complicating matters, Local Governments may also make variations to the BCA applicable in their own localities – often via planning laws. The REIA acknowledges that the Productivity Commission has previously been instrumental in establishing an intergovernmental agreement to limit the grounds for variation in the BCA, and that COAG has directed the Local Government and Planning Ministers Council to report on the timetable for implementing further building reforms by the end of 2006.

52. The benchmarking of Australian building regulation and subsequent identification of inconsistencies and duplication of related regulations will assist COAG pursue a truly nationally consistent building code. An improved BCA will reduce inefficiencies and unnecessary costs in the construction sector arising from the need to adhere to multiple building regimes.

53. The REIA is also supportive of the inclusion of OH&S and consumer protection laws in the benchmarking study. Inconsistencies and duplication within both of these areas impact significantly on real estate agencies operating across domestic borders. Fundamentally, all jurisdictions are attempting to provide the same level of consumer protection and duty of care to provide a safe workplace. Unilateral modifications to these regimes create unnecessary complexity and uncertainty for employees,

employers and consumers. However, the Productivity Commission may wish to reconsider the inclusion of the consumer protection laws given the recent announcement that the Productivity Commission will be conducting a separate review of *Australia's Consumer Protection Framework* over the next 12 months. As part of this review, the Productivity Commission is to report on “*any barriers to, and ways to improve, the harmonisation and coordination of consumer policy and its development and administration across jurisdictions in Australia, including ways to improve institutional arrangements and to avoid duplication of effort*”.

54. The ‘*Key steps to generate indicators of the regulatory burden from inconsistency*’ proposed in Box 6.1 of the discussion paper appear reasonable and include opportunities for consultation with interested parties. The REIA is prepared to take part in these consultations and will also be able to provide industry experts and assistance in surveying affected real estate businesses.

55. The ‘*Possible indicators – doing business interstate*’ proposed in Table 6.2 also appear reasonable but the REIA would urge the Productivity Commission to include indicators of cost wherever possible in addition to the indicators relating to the proportion of unnecessary or overly burdensome regulations. The establishment of notional business activities will require close industry input and the REIA is able to provide examples of common business activities that are subject to inconsistent or duplicated regulation.

56. Once the notional business activities have been determined, it may also be possible to include other specific indicators such as:

- a. **Community costs** brought about by regulatory restrictions (e.g. for planning and approval processes this would be the costs imposed on the community by restricting where people may live, work and play).
- b. **Ongoing transaction costs** (e.g. costs applicable to each subsequent transaction, for instance, the cost of disclosing an energy rating on a building for each property sale).
- c. **The level of competition** (e.g. restrictions on cross-boarder trade may result in industrial inefficiencies).
- d. **Risks and Uncertainties** (e.g. businesses may shy away from becoming involved in certain business activities due to a lack of clarity about the degree to which regulations may or may not apply in other jurisdictions).

### **The Quantity and Quality of Regulation**

57. From the perspective of individual businesses and industry sectors, it would be most fitting for the Productivity Commission to include both *quantitative and qualitative* indicators of the regulatory burden in each jurisdiction.

58. Quantifying the total stock of regulation in target areas will form an essential objective basis from which to further investigate the quality of cross-jurisdictional regulation. Establishing a regulatory load baseline is important from the perspective of measuring incremental changes in regulations and will enable quick and simple comparisons of certain regulations to be made across jurisdictions.

59. Unfortunately, it may be difficult to pick a reliable indicator for measuring the quantity of regulation. For instance, benchmarking the number of pages of legislation, the number of legislative instruments or the time since the implementation of certain regulations may not give a good indication of the actual regulatory load facing the business community (in isolation of a complementary qualitative analysis). Fewer pages of regulation will not necessarily correlate with a lower regulatory environment from a business compliance perspective - nor will fewer regulations if the few that are imposed are significantly more onerous.

60. A qualitative analysis will serve to examine whether or not there are differing or similar regulatory objectives across the various jurisdictions, and hence, whether or not it is appropriate to actually compare the regulatory regimes. In some instances it is likely that the broad regulatory goals are identical (e.g. consumer protection, privacy, OH&S) across all jurisdictions, while in other areas, individual jurisdictions may claim to be seeking to achieve differing regulatory outcomes. Whatever the case, an analysis of the regulatory intent is essential for understanding any regulatory differences that may be apparent.

61. The REIA believes that the Productivity Commission should also consider identifying 'best practice' regulations in each regulatory area that is considered. While this may be resisted by State and Territory Governments due to the possibility of also highlighting 'poor practices' in some jurisdictions, the "*COAG Principles of Good Regulatory Practice*" included in Box 7.2 of the discussion paper forms an excellent and agreed basis for making such an assessment.

62. Another important factor that must be considered in determining the quality of regulation relates to the extent to which cross-jurisdictional agreements are actually fulfilled in each jurisdiction. While important inter-governmental agreements are regularly established at COAG or within lower Ministerial Councils, it is not always the case that these agreements are fully implemented as originally agreed. For instance, the 1999 Inter-Governmental Agreement (IGA) established as part of the implementation of *A New Tax System (GST) ACT 2000* identified a range of State taxes that were to be abolished pending the successful operation of the GST in terms of delivering equivalent revenue to the Australian States and Territories. The State taxes identified for abolition that were deferred under the IGA fall into two categories:

- a. stamp duty on business (non-residential) conveyances; and
- b. 'other stamp duties', applying to a range of financial and capital transactions including: leases, mortgages, debentures, bonds and other loan securities, credit arrangements, instalment purchase arrangements and rental arrangements, and on cheques, bills of exchange, promissory notes and unquoted marketable securities.

63. However, after the implementation of the GST and despite all States receiving GST revenue in excess of the revenue they would have received under previous financial arrangements (including all jurisdictions becoming ‘GST positive’), the States instead applied a differing interpretation of the IGA, concluding that they had only agreed to *consider* the removal of the identified taxes in the overall context of future State budgets. As a result, the States have not fully implemented the IGA and have even used the possible abolition of the identified taxes as grounds for further negotiation on the distribution of GST revenue. Many of the identified taxes continue to be an efficiency drag on the national economy and affected businesses are now subject to the GST in addition to these taxes. The extent to which all jurisdictions choose to adhere to agreements of this nature is the true measure of whether or not these arrangements will work.

64. In summary, individual businesses or industry sectors are likely be affected by different regulations to different degrees and a reporting process that includes both the quantity and quality of regulations will enable businesses to more fully compare the impact of each specific regulation on their individual circumstances. This style of reporting is also extremely important for allowing policy makers to consider options for changing regulations in each specific jurisdiction.

## **The Way Forward**

### **Benchmarking Program and Implementation**

65. One obvious area that should be targeted is the duplication of regulation across jurisdictions caused by regulatory overlap. The other prime candidate for benchmarking is regulatory inconsistency between jurisdictions, particularly in circumstances where there is no fundamental reason why this should be the case. Overlap and inconsistency together impose additional unnecessary compliance burdens on affected businesses and act as a barrier to cross boarder trade and competition. For example, a clear duplication of regulation occur in the case of consumer protection laws, with the Commonwealth *Trade Practices Act 1974* and State and Territory Acts (which are essentially identical to the TPA) applying to corporations simultaneously. Inconsistencies in real estate licensing between the eight States and Territories imposes unnecessary costs for real estate agents operating across borders as outlined at paragraph 41.

66. While both areas are vitally important from a benchmarking point of view, the REIA is of the opinion that the benchmarking of regulatory ‘duplication’ should be given priority over regulatory ‘inconsistency’. Governments in all jurisdictions should be willing and able to reduce areas of regulatory duplication if it is clear that regulating certain activities is also imposing unnecessary costs on affected governments themselves. Businesses will of course appreciate any initiatives aimed at reducing regulatory duplication.

67. The Productivity Commission should investigate areas of inconsistency as a highly important but second level priority, except where those inconsistencies impact significantly upon cross-jurisdictional trade (in which case equal priority should be given to duplication and inconsistency). Where trade does not significantly occur across borders, regulatory inconsistencies will not impose significant additional costs on businesses operating in one jurisdiction only. Benchmarking can later be extended to cover businesses operating in one jurisdiction only, with the aim of identifying a minimum level of regulation that could be applied nationally.

What are the likely costs and benefits of a benchmarking program?

68. While dependent upon the selection of regulatory priorities and the indicators chosen to benchmark each regulatory area, the costs of the benchmarking exercise are likely to constitute:

- a. the administrative program costs borne by the Productivity Commission;
- b. data collection costs; and
- c. costs applicable to participating businesses or governments.

69. It is likely that, the sum of these costs will total several million dollars over a minimum number of years (2-3 years) that will be required to complete the first phase of the benchmarking exercise.

70. However, provided that the process ultimately leads to more efficient regulation of the business environment, the benefits of having completed the benchmarking exercise are likely to far exceed the costs of undertaking the study. Considering that it will usually be the case that targeted regulations will be impacting business across all eight (nine including the Commonwealth) Australian jurisdictions, benchmarking is likely to result in a higher cost / benefit ratio on a per capita (or per business) basis than has been demonstrated in other countries such as the U.K. where benchmarking has been undertaken successfully in the past.

71. While the REIA is supportive of the proposed benchmarking exercise, the draft framework presented in the discussion paper is particularly detailed and complex and may not be able to be implemented within reasonable time, resource and financial constraints. The REIA suggests that a simpler approach may be required to ensure that the exercise does not get bogged down in an overly detailed analysis, which at the end of the day may also be open to substantial interpretation and criticism. A simpler analysis would substantially reduce costs and could produce outcomes within a much quicker timeframe, while also helping to gain stronger stakeholder agreement for the proposed process prior to the exercise and release of the end result.

72. Given the likely cost of even a simplified exercise, the Productivity Commission, or indeed the Commonwealth Government, should give serious consideration to the establishment of a separate statutory body that could be charged with developing and implementing the cross-jurisdictional benchmarking program on an ongoing basis. This proposal would then allow the Productivity Commission to remain focussed on other important activities, such as the recently announced review of Australia's consumer protection policy. The REIA would not like to see the Productivity Commission become crippled by an over-allocation of resources to the benchmarking effort.

73. It is also important to establish an agreed program for implementation of the benchmarking exercise. This will aid budgetary considerations and allow stakeholders to be advised well in advance of the implementation of each part of the program. While the current framework does provide indicative timeframes at Table 8.3, it is not clear what "areas 1 -8" represent and it does not identify responsible parties. Further the indicative timeframe does not address any of the steps that would need to be undertaken to complete the benchmarking tasks in each "area". The REIA suggests that a program for implementation be established that, for instance, contained information allowing stakeholders to ascertain that *"OH&S will be benchmarked by the Productivity Commission commencing June 2007. Stakeholder consultation will take place during July 2007, with internal benchmarking to be complete by September 2007. A draft report will be open for comment to end November 2007, with a final report to be presented to the Commonwealth by January 2008."*

What are the highest priority areas or regulations to be benchmarked?

74. The release of the report *"Rethinking Regulation"* in January 2006 by the Australian Government's Taskforce on Reducing Regulatory Burdens on Business has helped illustrate the depth and breadth of the problems now evident within the Australian regulatory environment. This single report has identified a plethora of areas including health, labour markets, consumer protection, environmental, building, financial, corporate, taxation, superannuation and trade in which Commonwealth regulations are unnecessary, overly burdensome or duplicated in other jurisdictions.

75. While the REIA would eventually like to see all regulations impacting upon Australian businesses benchmarked for cross-jurisdictional comparison, it makes sense to prioritise the order in which this process is to occur. There are several reasons for some level of prioritization to occur.

76. Firstly, there are an extremely large number of regulations that need to be benchmarked. It will not be possible to pursue all of these simultaneously within reasonable resource constraints. Secondly, it is logical to develop and establish workable benchmarking systems and processes prior to attempting to benchmark all other regulations. This will help to minimise errors which could otherwise be duplicated across many areas. A robust process should first be established for a 'representative' regulation (e.g. OH&S) which may then be used to assess all other similar regulations.



77. The selection of priority regulations should be based upon those likely to impact on all businesses, that cut across all levels of government, that are evidently different or duplicated in different jurisdictions, that relate to known areas of concern or that are known to add a significant burden to business operations in some jurisdictions.

78. The Productivity Commission's suggestion to commence benchmarking with a focus on the regulatory 'hotspots' identified by COAG including:

- a. rail safety regulation;
- b. occupational health and safety;
- c. national trade measurement;
- d. chemicals and plastics;
- e. development assessment arrangements; and
- f. building regulations.

79. appears reasonable, but in some cases may not relate directly to the majority of Australian businesses. For instance, rail safety regulation and chemicals and plastics are quite specific regulatory areas that are not applicable in the broader business sense. The REIA suggests that one area that is of concern to all Australian businesses relates to the regulation of the property sector.

#### Why Property?

80. Real property is more often than not a fundamental business requirement. Whether big or small, whether leasing or buying a premises, almost all businesses require land or a building from which to operate. In addition, most businesses also rely on physical infrastructure such as roads, rail, ports, communications lines and bridges all of which are affected to some degree by planning, building and property title regulations.

81. In line with the Productivity Commission's proposed breakdown categories, property is important from a business perspective when:

- a. Starting a business: A suitable premises must be sourced and a title to the property secured (either by lease or purchase) to enable business operations to commence. The purchasing or leasing of property will usually also attract some level of initial and ongoing property taxation. Premises must often be registered as the location of the business and in some cases will be subject to planning law, the development application process and building regulations - particularly when greenfield / brownfield sites are selected as a future base of operations.

- b. Doing business: Premises must be maintained in a suitable condition for operations to occur. This may include inspections by regulatory authorities to ensure that minimum safety standards are upheld or that new building regulations are adhered to. For instance, the proposed incorporation of aspects of the Commonwealth Disability Discrimination Act within the BCA is likely to result in businesses being required to modify their premises to ensure they are fully accessible to disabled or vision impaired persons. Potential modifications would include widening doorways, installing lifts and ensuring accessible toilet facilities are available. Such modifications will result in significant additional costs for affected businesses.

Outside influences may also impact on the operations of the business, highlighting the importance of planning processes. For instance, where land use is changing around the site of a business (e.g. on the urban fringe), the site may be deemed no longer suitable for operations to occur due to complaints about noise, smell, pollution or traffic congestion. Business may need to move or expand their premises from time to time, again raising all of the property issues arising when starting a business. Property taxation is a key factor when deciding whether or not, or where, to relocate a business and represents a clear barrier to efficient business relocation. Businesses should be free to relocate from inappropriate premises without significant penalty.

- c. Doing business interstate: Businesses wishing to expand their operations interstate may be required to obtain additional operational premises, distribution points, warehouse facilities or retail outlets. As property laws (including transfer of title, taxes, planning processes, development application processes and building regulations) vary across Australian jurisdictions, there is a significant barrier for some businesses establishing additional premises in other jurisdictions because another raft of regulations would need to be dealt with in doing so. For some businesses it will simply be easier to on-sell goods or services to a separate business with expertise in operating in a given jurisdiction than to seek to establish their own presence in that jurisdiction.

This is also the case for domestic property investors (as examined in paragraph 49) and foreign investors. Notwithstanding specific restrictions that may apply, one of the main barriers for foreign interests investing within Australia is that our laws, including property laws, are different from those within the place of investment origin, hindering understanding of the Australian investment environment. In order to maximise the chance of being successful, foreign investors must attain a keen understanding of any Australian regulations likely to impact on their investment. The REIA believes that foreign interests would be somewhat deterred from investing in Australian property in more than one or two jurisdictions due to the potential to be subject to up to eight different property law regimes. According to the Foreign Investment Review Board during 2003-04, 75% of total foreign investment within the Australian property sector occurred in NSW and QLD combined, while just 7% of foreign investors purchased property in more than one jurisdiction.

82. For the reasons outlined above, the REIA asserts that property is a vital element of running a successful business in Australia. The holistic inclusion of the real property sector in the *Performance Benchmarking of Australian Business Regulation* would facilitate an objective illustration of the key property related regulations that are inconsistent or duplicated, and therefore restricting Australian business activity. A nationally consistent system of property law and regulation would represent a significant step forward in the maturation of Australia as a nation state, as opposed to remaining a collection of independent colonies with independent regulatory ideologies.

83. This view has been supported within the recent House of Representatives Standing Committee on Legal and Constitutional Affairs report on the “*Harmonisation of Legal Systems within Australian and between Australia and New Zealand*”. The report acknowledged the regulatory inconsistencies and complexity in Australian real property laws and supported recent initiatives that have been undertaken to progress national consistency in property conveyancing and title registration. The Committee has advocated the development a truly national real estate regulatory framework and supports the development of a Model Real Property Act by the Property Law Reform Alliance (PLRA - a coalition of industry and legal representatives formed to further the adoption of a nationally consistent property regime) which could be “...implemented on a cooperative basis by means of the applied or complementary legislation mechanisms”. The publication of benchmarks across the property sector would greatly aid this process.

84. The REIA and the PLRA (of which the REIA is a member) would be pleased to work with the Productivity Commission to benchmark the current system of property law as a basis for further progressing the implementation of a nationally consistent property regime.

## SUMMARY

85. Australia's federated political structure has resulted in overlapping and unnecessary regulation at the State, Territory and Federal level. With nine jurisdictions legislating in the area of real estate practice, there are substantive differences between cross-jurisdictional regulatory requirements, compliance procedures and the treatment of persons/businesses found to be in breach of regulations.

86. Harmonisation of the regulatory environment nationwide, including the standardisation of regulatory terms and definitions, would be a significant step forward in reducing red tape on Australian businesses.

87. The REIA supports COAG's in-principle decision to adopt a common framework for benchmarking, measuring and reporting on the regulatory burden affecting business across Australia. Such an approach will lay the foundation for identifying areas of duplication and inconsistency, identifying sensible minimum regulatory requirements and implementing processes to achieve nationally consistent business regulation.

88. The REIA supports the inclusion of OH&S, licensing (including investigating mutual recognition arrangements), property tax regulation and financial and corporate regulation but seeks a more holistic inclusion of the real property sector in the benchmarking exercise (including title registration and transfer, taxation, planning, development approval processes, building regulation and professional licensing) to underpin efforts to move towards a nationally consistent system of property regulation within Australia.

89. The REIA looks forward to the commencement of the benchmarking exercise and offers assistance in determining more specific indicators and reporting processes once priority regulatory areas have been finalised in February 2006. The REIA is also prepared to provide industry data and/or industry experts to participate in the assessment process.

Prepared by:

Secretariat  
Real Estate Institute of Australia

22 December 2006

Annex:

- A. Land Taxes Comparison of the States and Territories
- B. Stamp Duty Rates on Property – Excluding Concessions

Attachment:

- 1. Summary of State Legislation Regulating Real Estate Practice

ANNEX A  
REIA SUBMISSION PERFORMANCE BENCHMARKING  
DATED 22 DECEMBER 2006

**LAND TAXES COMPARISON OF THE STATES AND TERRITORIES**

**Land Tax is payable on the unimproved value of land. In all States and Territories, the principal place of residence is exempt. Estimates below are for one property owned by an individual.**

State	Exemption Threshold	Rates of Land Tax	Land Tax Payable on UV Property of \$300,000
New South Wales	\$352,000	Land tax is \$100 plus 1.7% of the property value in excess of \$352,000	Nil
Victoria	\$199,999	\$200,000 - \$539,999: \$200 + 0.2% over \$200,000 Five more bands rising to \$2,700,000 > \$2,700,000: \$36,330 + 3.5% over \$2.7m.	\$400
Queensland	\$499,999 Other rates apply to companies, absentees and trustees	\$500,000 - \$749,999 \$500 + 0.7% over \$500,000 more 3 more bands rising to \$3 million > \$3,000,000: 1.25%	Nil
South Australia	\$110,000	\$110,001 - \$350,000: 0.3% over \$110,000 3 more bands to \$1 mill. > \$1 mill.: \$11,420 + 3.7% over \$1mill.	\$570
Western Australia	\$150,000	Applies above \$150,000. \$150,000 - \$390,000: 0.15% \$390,000 - \$875,000: \$360 + 0.45% of amount above \$390,000 3 more bands from \$875,000. In addition, Metropolitan Region Improvement Tax applies in Perth at 0.15% of the unimproved taxable value of the land.	\$225  \$675 (Perth)
Australian Capital Territory	Nil	Up to \$75,000: 0.60% \$75,001 - \$150,000: 0.89% \$150,001 - \$275,000: 1.15% >\$275,001: 1.40%	\$4,200
Tasmania	\$25,000	\$25,000 - \$ 349,999: \$50 + 0.55% over \$25,000 \$350,000 - \$749,999: \$1,837.50 + 2.00% over \$350,000 > \$750,000: \$9837.50 + 2.5% over \$750,000	\$1,562
Northern Territory	Nil	Nil	Nil

Prepared by:

Secretariat  
Real Estate Institute of Australia

3 October 2006

ANNEX B  
REIA SUBMISSION PERFORMANCE BENCHMARKING  
DATED 22 DECEMBER 2006

**STAMP DUTY RATES ON PROPERTY**  
**BY STATE AND TERRITORY – EXCLUDING CONCESSIONS.**

The following rates of stamp duty **do not take account of any concessions** that may be available.

State	Rates of Stamp Duty on the Purchase of Property – No Concessions	Duty payable on an Indicative Property Price of \$300,000	Duty payable on median house price (September qtr 06)
<b>New South Wales</b>	Min. rate 1.25% up to \$14,000 Max. rate \$40,490 + 5.5% over \$1 mill, Premium property tax: \$150,490 + 7.0% over \$3 mill Vendor transfer duty abolished 2 August-05	\$8,990	\$520,300 median: \$18,903.50
<b>Victoria</b>	Min. rate 1.4% up to \$20,000 Mid rate (\$115,001 to \$870,000): \$2,560 + 6% over \$115,000 Max. rate 5.5% on \$870,000 and over (From January 2007: mid rate \$115,000 to \$400,000 = \$2,560 + 5%, \$400,000 to \$500,000 flat rate of \$2,850 stamp duty cut, houses above 500,000 would remain the same.)	\$13,660 (\$11,810 from Jan 07)	\$377,000 median: \$18,280.00 (\$15,560 from Jan 07)
<b>Queensland</b>	Properties up to \$320,000 exempt. Properties above \$320,000: Min rate 1.5% up to \$20,000 Mid rate (\$250,000 to \$500,000) \$7,225 + 3.5% over \$250,000 Max rate \$23,975 + 4.5% over \$700,000 Total of 7 bands	\$3,000	\$330,000 median: \$3,550.00
<b>South Australia</b>	Min rate 1.0% up to \$12,000 Seven bands (2% to 5%) rising to \$500,000 Max rate \$21,330 + 5.5% over \$500,000.	\$11,330	\$285,000 median: \$10,617.50
<b>Western Australia</b>	Up to \$80,000: 2.0% 3 bands (3.0% to 5.0%) rising to \$500,000 Max rate: \$20,700 + 5.4% over \$500,000	\$10,700	\$430,000 median: \$17,200.00
<b>Australian Capital Territory</b>	Min rate: \$20 or 2.0% whichever is greater up to \$100,000 Five bands (3.5% to 5.75%) rising to \$1 mill Max rate: \$49,250 + 6.75% over 1 mill	\$9,500	\$375,000 median: \$13,625.00
<b>Tasmania</b>	Min rate: \$20 up to \$1,300 Six bands (1.5% to 3.5%) rising to \$225,000 Max rate: \$6,550 + 4.0% over \$225,000	\$9,550	\$290,000 median: \$9,150.00
<b>Northern Territory</b>	Rates for < \$500,000 calculated according to $D = (0.065V^2) + 21V$ where D is duty payable, & V is value of property sold divided by 1000. Rates for > \$500,000 – 5.4%	\$9,650 (\$12,150 if it is an investment dwelling)	\$385,000 median: \$15,219.63 (17,719.63 if it is an investment dwelling)

Prepared by: Secretariat Real Estate Institute of Australia, 6 Dec. 06

**SUMMARY OF STATE LEGISLATION**  
**REGULATING REAL ESTATE AGENCY PRACTICE**

**AS AT 30 JUNE 2006**

*In addition to various Commonwealth legislation: Corporations Act, Tax Acts, Insurance Acts, Discrimination Acts, Privacy Act, Trade Practices Act, ASIC Act, First Home Owners Act, Financial Services Reform Act, etc.*

	QLD	NSW	VIC	SA	WA	TAS (regulator comments included 2006)	NT (regulator comments included 2005)	ACT
<b>Principal legislation</b>	<i>Property Agents and Motor Dealers Act 2005.</i>	<i>Property, Stock and Business Agents Act 2002.</i>  <i>Property Stock and Business Agents Regulations 2003.</i>	<i>Estate Agents Act 1980.</i>  <i>Estate Agents (Professional Conduct) Regs 1997.</i>  <i>Estate Agents (Contracts) Regs. 1997.</i>  <i>Estate Agents (General, Accounts and Audit) Regs 1997.</i>  <i>Estate Agents and Agent's Representative (Courses of Instruction and Examinations) Regs 1995.</i>  <i>Estate Agents (Education) Regs 2004.</i>  <i>Estate Agents (Exemption) Regs</i>	<i>Land Agents Act 1994.</i>  <i>Land and Business (Sale and Conveyancing) Act 1994.</i>	<i>Real Estate and Business Agents Act 1978.</i>  <i>Real Estate and Business Agents Regulations 1979.</i>  <i>Code of Conduct for Agents and Sales Representatives.</i>	<i>Auctioneers and Real Estate Agents Act 1991.</i>  <i>Auctioneers and Real Estate Agents Regulations 1992.</i>  <i>Property Agents &amp; Land Transactions Act 2005.</i>	<i>Agents Licensing Act 1979.</i>	<i>Civil Law [Sale of Residential Property] Act 2004.</i>  <i>Residential Tenancies Act 1997.</i>  <i>Agents Act 2003.</i>

ATTACHMENT 1  
REIA SUBMISSION ON PERFORMANCE BENCHMARKING  
DATED 22 DECEMBER 2006

	QLD	NSW	VIC	SA	WA	TAS (regulator comments included 2006)	NT (regulator comments included 2005)	ACT
			1997.  Estate Agents (Exemption) Regs 2005.  Estate Agents (Fees) Regs 1996.					
<b>Administration</b>	Office of Fair Trading.	Office of Fair Trading.	Consumer Affairs Victoria.  Business Licensing Authority.	Office of Consumer and Business Affairs.	Real Estate and Business Agents Supervisory Board – Department of Consumer Employment Protection.	Auctioneers And Real Estate Agents Council of Tasmania.	Department of Justice.	Office of Fair Trading.
<b>Other relevant legislation</b>	<i>Residential Tenancies Act 1994.</i>  <i>Body Corporate and Community Management Act 1997.</i>  <i>Land Sales Act 1984.</i>	<i>Residential Tenancies Act 1987.</i>  <i>Agricultural Tenancies Act 1990.</i>  <i>Anti-Discrimination Act 1977.</i>  <i>Consumer, Trader &amp; Tenancy Tribunal Act 2001.</i>  <i>Community Land Management Act 1989 (plus other Community Acts).</i>  <i>Contracts Review Act 1980.</i>  <i>Conveyancing Act 1919 (various).</i>  <i>Conveyancers</i>	<i>Residential Tenancies Act 1997.</i>  <i>Retail Tenancies Reform Act 1998.</i>  <i>Retail Leases Act 2003.</i>  <i>Sale of Land Act 1962.</i>  <i>Subdivision Act 1988.</i>  <i>Fair Trading Act 1999.</i>  <i>Property Law Act 1958.</i>  <i>Settled Land Act 1958.</i>  <i>Transfer Of Land Act</i>	<i>Strata Titles Act 1988.</i>  <i>Community Titles Act 1996.</i>  <i>Residential Tenancies Act 1995.</i>  <i>Fair Trading Act 1987.</i>  <i>Real Property Act 1886.</i>  <i>Retail &amp; Commercial Leases Act 1995.</i>  <i>Land Valuers Act 1994.</i>  <i>Conveyancers Act 1994.</i>  <i>Development Act 1993.</i>	<i>State Legislation: Auction Sales Act 1973.</i>  <i>Auction Sales Regulations 1974.</i>  <i>Caravan Parks and Camping Grounds Act 1995.</i>  <i>Caravan Parks and Camping Grounds Regulations 1997.</i>  <i>Commercial Tenancy (Retail Shops) Agreements Act 1985.</i>  <i>Commercial Tenancy (Retail Shops) Agreements Regulations 1985.</i>  <i>Conservation and</i>	<i>Residential Tenancy Act 1997.</i>  <i>Residential Tenancy Amendment Act 2003.</i>  <i>Door to Door Trading Act 1986.</i>  <i>Strata Titles Act 1998.</i>  <i>Duties Act 2001.</i>  <i>Fair Trading Act 1990.</i>  <i>Acts Interpretation Act 1931.</i>  <i>Residential Tenancy Act 1997.</i>  <i>Residential Tenancy Amendment Act</i>	<i>Residential Tenancies Act 1999.</i>  <i>Building Act 1993.</i>  <i>Unit Titles Act 1975 1976.</i>  <i>Business Tenancies (Fair Dealings) Act 2003.</i>  <i>Law of Property Act 2000.</i>  <i>Real Property (Unit Titles) Act 1975</i>  <i>Auctioneers Act 1996.</i>	<i>Civil Law [Sale of Residential Property] Regulation 2004.</i>  <i>Residential Tenancies Regulation 1998/2005.</i>  <i>Agents Regulation 2003.</i>
<b>Other relevant legislation cont...</b>								



ATTACHMENT 1  
REIA SUBMISSION ON PERFORMANCE BENCHMARKING  
DATED 22 DECEMBER 2006

	QLD	NSW	VIC	SA	WA	TAS (regulator comments included 2006)	NT (regulator comments included 2005)	ACT
Other relevant legislation cont...		<i>Licensing Act 1995 .</i> <i>Conveyancers</i> <i>Licensing Act 2003.</i> <i>Crimes Act (various).</i> <i>Dividing Fences Act</i> <i>1991.</i> <i>Environmental</i> <i>Planning &amp;</i> <i>Assessment Act</i> <i>1979.</i> <i>Fair Trading Act</i> <i>1987.</i> <i>Land Tax Act 1956.</i> <i>Land Tax</i> <i>Management Act</i> <i>1956.</i> <i>Local Government</i> <i>Act 1993.</i> <i>Landlord &amp; Tenant</i> <i>Act 1899.</i> <i>Landlord &amp; Tenant</i> <i>(Rental Bonds) Act</i> <i>1977.</i> <i>Law of Property Act</i> <i>1898.</i> <i>Occupational Health</i> <i>&amp; Safety Act 2000.</i> <i>Real property Act</i> <i>1900.</i> <i>Retail Leases Act</i> <i>1994 (various other</i>	<i>1958.</i> <i>Retirement Villages</i> <i>Act 1986.</i> <i>Legal Profession Act</i> <i>2004.</i> <i>Occupational Health</i> <i>&amp; Safety Act 2004.</i> <i>VCAT Act 1998.</i> <i>Electronic</i> <i>Transactions Act</i> <i>2000.</i> <i>Essential Services</i> <i>Act 1999.</i> <i>Land Acquisition &amp;</i> <i>Compensation Act</i> <i>1986.</i> <i>Heritage Act 1995.</i> <i>Historic Buildings Act</i> <i>1981.</i> <i>Planning &amp;</i> <i>Environment Act</i> <i>1987.</i> <i>Valuation Of Land</i> <i>Act 1960.</i> <i>Duties Act 2000.</i> <i>Land Tax Act 1958.</i> <i>Trustee Act 1958.</i>	<i>Land Acquisition Act</i> <i>1969.</i> <i>Landlord and Tenant</i> <i>Act 1936.</i> <i>Law of Property Act</i> <i>1936.</i> <i>Heritage Places Act</i> <i>1993.</i> <i>Fences Act 1975.</i> <i>Business Names Act</i> <i>1996.</i> <i>Crown Lands Act</i> <i>1929.</i> <i>Encroachments Act</i> <i>1944.</i> <i>Environment</i> <i>Protection Act 1993.</i> <i>Geographical Names</i> <i>Act 1991.</i> <i>Irrigation Act 1994.</i> <i>Legal Practitioners</i> <i>Act 1981.</i> <i>Local Government</i> <i>Act 1934.</i> <i>Local Government</i> <i>Act 1999.</i> <i>Misrepresentation</i> <i>Act 1972.</i> <i>Native Title (South</i> <i>Australia) Act 1994.</i>	<i>Land Management</i> <i>Act 1984.</i> <i>Conservation and</i> <i>Land Management</i> <i>Regulations 2002.</i> <i>Consumer Affairs Act</i> <i>1971.</i> <i>Fair Trading Act</i> <i>1987.</i> <i>Fair Trading</i> <i>(Retirement Villages</i> <i>Code) Regulations</i> <i>2003.</i> <i>First Home Owner</i> <i>Grant Act 2000.</i> <i>First Home Owner</i> <i>Grant Regulations</i> <i>2000.</i> <i>Heritage of Western</i> <i>Australia Act 1990.</i> <i>Land Administration</i> <i>Act 1997.</i> <i>Land Administration</i> <i>Regulations 1998.</i> <i>Licensed Surveyors</i> <i>Act 1909.</i> <i>Licensed Surveyors</i> <i>Amendment Act</i> <i>1996.</i> <i>Local Government</i> <i>Act 1995.</i>	2005.		

ATTACHMENT 1  
REIA SUBMISSION ON PERFORMANCE BENCHMARKING  
DATED 22 DECEMBER 2006

	QLD	NSW	VIC	SA	WA	TAS (regulator comments included 2006)	NT (regulator comments included 2005)	ACT
Other relevant legislation cont...		<i>Retail Acts).</i> <i>Retirement Villages Act 1999.</i> <i>Strata Schemes (Freehold Development) Act 1973.</i> <i>Strata Schemes (Leasehold Development) Act 1986.</i> <i>Strata Schemes Management Act 1996 (various other Strata Acts).</i> <i>Trustee Act 1898.</i> <i>Trustee Act 1925.</i> <i>Various Insurance Related Acts.</i> <i>Valuers Act 2003.</i> <i>Valuation of Land Act 1916.</i> <i>Conveyancing (Sale of Land) Regs 2005.</i> <i>Residential Tenancies Regs 2006.</i>	<i>Building Act 1993.</i> <i>Business Names Act 1962.</i> <i>Business Licensing Authority Act 1998.</i> <i>Commercial Arbitration Act 1984.</i> <i>Domestic Buildings Contracts Act 1995.</i> <i>Equal Opportunity Act 1995.</i> <i>Fences Act 1968.</i> <i>Forestry Rights Act 1996.</i> <i>Goods Act 1958.</i> <i>Information Privacy Act 2000.</i> <i>Instruments Act 1958.</i> <i>Land Act 1958.</i> <i>Landlord &amp; Tenant Act 1958.</i> <i>Limitations of Actions Act 1958.</i> <i>Local Government Act 1989.</i>	<i>Native Vegetation Act 1991.</i> <i>Partnership Act 1891.</i> <i>Pastoral Land Management and Conservation Act 1989.</i> <i>Rates and Land Tax Remission Act 1986.</i> <i>Retirement Villages Act 1987.</i> <i>Stamp Duties Act 1923.</i> <i>Unclaimed Moneys Act 1891.</i> <i>Valuation of Land Act 1971.</i> <i>Natural Resources Management Act 2004.</i>	<i>Native Title (State Provisions) Act 1999.</i> <i>Property Law Act 1969.</i> <i>Occupational Safety and Health Act 1984.</i> <i>Occupational Safety and Health Regulations 1996.</i> <i>Residential Tenancies Act 1987.</i> <i>Residential Tenancies Regulations 1989.</i> <i>Retirement Villages Act 1992.</i> <i>Retirement Villages Regulations 1992.</i> <i>Sale of Land Act 1970.</i> <i>Settlement Agents' Code of Conduct (Principal Regulation) 1982.</i> <i>Soil and Land Conservation Act 1945.</i> <i>Swan River Trust Act 1988.</i> <i>Strata Titles Act 1985.</i> <i>Strata Titles General</i>			

ATTACHMENT 1  
REIA SUBMISSION ON PERFORMANCE BENCHMARKING  
DATED 22 DECEMBER 2006

	QLD	NSW	VIC	SA	WA	TAS (regulator comments included 2006)	NT (regulator comments included 2005)	ACT
			<i>Partnership Act 1958.</i>  <i>Public Holidays Act 1993.</i>  <i>Small Business Commissioner Act 2003.</i>  <i>Unclaimed Monies Act 1962.</i>  <i>First Home Owners Grant Act 2000.</i>		<i>Regulations 1996.</i>  <i>Transfer of Land Act 1893.</i>  <i>Transfer of Land Amendment Act 1996, 1999, 2003.</i>  <i>Transfer of Land Regulations 2004.</i>  <i>Transfer of Land (Surveys) Regulations 1995.</i>  <i>Valuation of Land Act 1978.</i>  <i>Valuation of Land Regulations 1979.</i>			
<b>Scope</b>  <b>Scope cont..</b>	Real estate agents.  Registered sales person.  Auctioneers.  Property developers.  Restricted letting agents.  Pastoral houses.  Motor dealers.  Commercial agents.	Real estate agents.  Stock and station agents.  Business agents.  Strata managing agents.  Community managing agents.  On-site residential property managers.  Buyers agents.  Valuers.  Auctioneers.	Estate Agents which includes:  1. auctioneers.  2. agents representatives.	Registered land agents.  Sales Representative.  Business Agents.  Commercial Leasing Agents.	Real estate agents.  Sales representatives.  Sales representative (property management).	Real estate agents.  Auctioneers.  Sales consultants (includes property managers).	Real estate agents.  Business Agents.  Registered agent's representatives.  Conveyancing Agents.	Real estate agents.  Stock and station agents.  Business Agents.  Travel agents.  Employment agents.

ATTACHMENT 1  
REIA SUBMISSION ON PERFORMANCE BENCHMARKING  
DATED 22 DECEMBER 2006

	QLD	NSW	VIC	SA	WA	TAS (regulator comments included 2006)	NT (regulator comments included 2005)	ACT
<b>Exemptions</b>	Nil. Binds the Crown.	Does not bind the crown, a Council under Local Government Act 1993, public statutory authority prescribed by the regulations, Public Trustee, executor etc, solicitor when carrying out functions, sale by auction under the Charitable Fundraising Act 1991.	Estate Agents Act 1980 does not bind the Crown.	Property manager engaged in residential leasing working for a registered agent.	Pastoral companies (limited).	Does not bind the crown.	Does not bind the crown.	Nil.
<b>Licence categories</b>	Real estate agent. Registered sales person. Auctioneer. Property developer. Resident letting agent. Pastoral house. Pastoral house director. Pastoral house manager. Pastoral house auctioneer. Property developers must be licensed if they sell more than 6 residential properties	Real estate agent. Stock and station agent. Business agent. Strata managing agent.	Estate agent.	Land agent (not licensed in SA, 'registered').	Real estate and business agents licence (individual). Real estate and business agents licence (firm/partnership). Real estate and business agents licence (body corporate). Sales representatives registration. Sales representatives registration (property management). Currently no licence is required to conduct Strata	Real estate auctioneer. General auctioneer. Employed auctioneer Probationary auctioneer Temporary auctioneer. Real estate agent. Real estate manager. Real estate sales consultant.	Real Estate, Business & Conveyancing Agents.	Real estate agent. Stock and station agent. Business agent. Travel agent. Employment agent. Sales Persons.
Licence categories cont..								

ATTACHMENT 1  
REIA SUBMISSION ON PERFORMANCE BENCHMARKING  
DATED 22 DECEMBER 2006

	QLD	NSW	VIC	SA	WA	TAS (regulator comments included 2006)	NT (regulator comments included 2005)	ACT
	per year and have 15% or more interest in a property otherwise they must appoint a licensed real estate agent.				Management transactions.			
<b>Advertising application for licence</b>	Not publicly advertised.	Not applicable.	Not publicly advertised.	Not applicable.	Must be advertised.	Must be advertised.  <i>*May change post the release of new regulations.</i>	Must be advertised.	Must be advertised.
<b>Issuing authority</b>	Office of Fair Trading.	Office of Fair Trading.	Business Licensing Authority.	Office of Consumer and Business Affairs.	Real Estate and Business Agents Supervisory Board – Department of Consumer and Employment Protection (DOCEP).	Auctioneers and Real Estate Agents Council of Tasmania.	Agents Licensing Board of the Northern Territory.	ACT Office of Fair Trading.
<b>Term of licence</b>  Term of licence cont...	1 or 3 years.	1 year.	Reviewed annually.	Annual.	<b>Licence</b>  Licence is continuous <u>but must</u> also have Triennial Certificate to operate as an agent, which is renewed every three years.  <b>Registration</b>  Three years.	Annual.	Annual.	Annual.
<b>Continuing Professional Development (CPD) requirements</b>	Nil REIQ conducts CPD at no cost to members and staff of REIQ Accredited Agencies	Compulsory 12 points.	Mandatory for REIV members.  Estate Agents Act, S.45 permits Director of Consumer Affairs Victoria to require estate agents / agent's	No CPD requirements.	<i>Compulsory from January 2007</i>	There are no CPD requirements.		12 points annually (6 assessed & 6 non- assessed e.g. seminar attendance).  Applies to both licensed agent and salesperson.

ATTACHMENT 1  
REIA SUBMISSION ON PERFORMANCE BENCHMARKING  
DATED 22 DECEMBER 2006

	QLD	NSW	VIC	SA	WA	TAS (regulator comments included 2006)	NT (regulator comments included 2005)	ACT
			representatives to undertake professional development training. (no requirement as at 30/06/2006)					
<b>Suitability for all classes of licences</b>	<p>Must not be affected by bankruptcy.</p> <p>18 years of age or older.</p> <p>Cannot have a conviction in previous 5 years.</p> <p>Not currently disqualified.</p> <p>Must satisfy educational requirements.</p> <p>To be eligible, must complete specified competencies from the national real estate training package approved by ANTA.</p>	<p>Fame and character of person or if corporation the directors and secretary and whether corporation fit and proper.</p> <p>Been deemed competent in prescribed competencies.</p> <p>Attained 18 years of age.</p>	<p>18 years of age or older; and</p> <p>Passed a prescribed course or examinations; and</p> <p>Has not in the past 10 yrs been convicted or found proven any offence including drugs, fraud, violence or dishonesty punishable by imprisonment of 3 months or more.</p> <p>Is not an insolvent under administration.</p> <p>Is not disqualified.</p> <p>Been engaged as an agent's representative for not less than 1 year or periods amounting to one year whether full or part-time, during the 3 years immediately prior to applying for a licence; or</p>	<p>For land agents/salespersons must hold necessary qualifications as prescribed under regulations.</p> <p>For property managers no formal qualification requirements.</p> <p>For land agents/real estate salespersons not to have been convicted of an offence of dishonesty in the 10 years prior to application.</p> <p>Is not suspended or disqualified from practicing.</p> <p>Is not an undischarged bankrupt (only agent).</p> <p>For agents under Strata Titles Act/Community Titles Act no formal qualification</p>	<p><i>Real estate and business agents licence (individual):</i></p> <p>18 years of age or older.</p> <p>Minimum 2 years work experience in real estate and business broking industry.</p> <p>Good character and repute and a fit and proper person to hold a licence.</p> <p>National Police clearance (max 1 month old)</p> <p>Have access to sufficient assets and financial resources available comply with the requirements of this Act.</p> <p>Understands fully the duties and obligations imposed by this Act on agents.</p> <p><i>Real estate and</i></p>	<p>Holds the prescribed educational qualifications.</p> <p>Must not have been convicted of an indictable offence.</p>	<p>18 years of age or older.</p> <p>Fit and proper person.</p> <p>Completed course of competency-based training approved under s.22.</p> <p>Holds prescribed qualifications for the class of licence which is the subject of the application.</p> <p>Has other prescribed qualifications or experience, or</p> <p>By reason of qualifications and experience is competent to carry on business on own account as a licensed agent.</p> <p>The applicant will be insured for whole period of licence under an approved indemnity insurance policy; or</p>	<p>Attained 18 years of age.</p> <p>Fit and proper person.</p> <p>Is not disqualified.</p> <p>Been deemed competent in prescribed competencies.</p>

ATTACHMENT 1  
REIA SUBMISSION ON PERFORMANCE BENCHMARKING  
DATED 22 DECEMBER 2006

	QLD	NSW	VIC	SA	WA	TAS (regulator comments included 2006)	NT (regulator comments included 2005)	ACT
Suitability for all classes of licences cont..			<p>Has held an estate agent's licence within the period of 5 years immediately preceding application; or</p> <p>Has completed the relevant standards of competency required by the Estate Agents Council (Council not made a determination).</p>	requirement.	<p><i>business agents licence (firm/partnership):</i></p> <p>All parties are of good character and repute.</p> <p>All parties are proper persons to hold a licence.</p> <p>Have access to sufficient assets and financial resources to comply with the requirements of this Act.</p> <p>Partnership of no more than three, at least one person must be a licensed agent.</p> <p>Partnership of more than three, then at least two persons must be licensed.</p> <p>The person responsible for day to day operations must be licensed.</p> <p>Changes to partnership holding a licence must advise REBA of any changes in management structure.</p> <p><i>Real estate and</i></p>		The applicant is exempt from the requirement under s.108B to be insured under an approved indemnity insurance policy.	

ATTACHMENT 1  
REIA SUBMISSION ON PERFORMANCE BENCHMARKING  
DATED 22 DECEMBER 2006

	QLD	NSW	VIC	SA	WA	TAS (regulator comments included 2006)	NT (regulator comments included 2005)	ACT
Suitability for all classes of licences cont..					<p><i>business agents licence (Body corporate):</i></p> <p>All directors are of good character and repute and fit and proper to hold a licence.</p> <p>Body corporate has access to sufficient assets and financial resources to comply with the requirements of this Act.</p> <p>Company of no more than three, at least one must be a licensed agent.</p> <p>Company of more than three, then at least two persons must be licensed.</p> <p>The person responsible for day to day operations must be licensed.</p> <p>Changes to partnership holding a licence must advise REBA of any changes in management structure.</p> <p>If the triennial certificate holder is</p>			



ATTACHMENT 1  
REIA SUBMISSION ON PERFORMANCE BENCHMARKING  
DATED 22 DECEMBER 2006

	QLD	NSW	VIC	SA	WA	TAS (regulator comments included 2006)	NT (regulator comments included 2005)	ACT
Suitability for all classes of licences cont..					<p>not an owner of the company, then there must be an employment contract in place with an annual remuneration, exclusive of sales commission, for \$30,000 (REBA policy).</p> <p><i>Registration:</i></p> <p>Must work under the supervision of a licensed real estate and business agent.</p> <p>18 years of age or older.</p> <p>Be a person of suitably good character to hold a certificate of registration.</p> <p>Have a full understanding of the duties and obligations of a real estate and business sales representative as is imposed by the Act.</p> <p>National Police Clearance (max 3 months old).</p>			
Suitability for all classes of licences cont..								

ATTACHMENT 1  
REIA SUBMISSION ON PERFORMANCE BENCHMARKING  
DATED 22 DECEMBER 2006

	QLD	NSW	VIC	SA	WA	TAS (regulator comments included 2006)	NT (regulator comments included 2005)	ACT
<b>Eligibility for Real Estate Agent's Licence</b>	Completion of 17 specified units of competency from the PRD01 Training package as follows :-  PRDRE13A;PRDRE15A;PRDRE18A;PRDRE39A;PRDRE11A;PRDRE30A;PRDRE12A;PRDRE14A;PRDPOD62A;PRDRE10A;PRDRE22A;PRDRE26A;PRDRE19A;PRDRE37A;PRDRE28A;PRDRE16A and PRDRE09A (This unit is the only competency from the Diploma level).	Completed 16 identified units from PRD01.  Complete Land Economics Degree: sales, property management, business agent, strata manager, stock & station.	Education Certificate IV in Business Agency Practice Course consisting of 17 competencies (3 state-based, 14 from PRERE01 Cert IV; and  Twelve months industry experience.	To be registered as a Land Agent, the person must have completed the PRD50101 Diploma of Property (Real Estate):  PRDRE01A PRDRE02A PRDRE03A PRDRE04A PRDRE05A PRDRE06A PRDRE08A PRDRE09A PRDRE19A PRDRE28A BSAFIN501B BSAFIN502B BSXFM1504A BSXFM1511A  To achieve the Diploma competency must be demonstrated in all 14 specified core units, 1 elective unit at Diploma level and 9 core units in Certificate IV (total 24 units).  Salespersons are not registered in SA. In order to qualify as a salesperson, the minimum qualification is a PRD40101	PRD50101 (as stated) plus Real Estate Law (ABH510, ABH511, NAP750) Rural Sales (ABH530) and Selling businesses (ABH531).  REIWA or TAFE or other RTO.	(a) (i)Completed the prescribed educational qualifications (Diploma in Property (Real Estate) or Diploma in Business (Real Estate Management)); and  (ii) been engaged full time as a real estate sales consultant for a total period of at least 2 years during the 5 years immediately preceding the application for the licence; or  (b) has held a real estate agents licence or a real estate managers licence at any time during the 5 years immediately preceding the application for the licence; or  (c) has -  (i) at any time during the 5 years immediately preceding the application, been authorized under the	Units of competency enabling completion of:  Certificate IV for Agents Representative License.  Diploma in Real Property for Full License (i.e. Able to operate a real estate business).	Completion of three competencies:  <ul style="list-style-type: none"> <li>Real Estate Agent.</li> <li>Stock and Station Agent.</li> <li>Business Agents License.</li> </ul>
Eligibility for Real Estate Agent's								

ATTACHMENT 1  
REIA SUBMISSION ON PERFORMANCE BENCHMARKING  
DATED 22 DECEMBER 2006

	QLD	NSW	VIC	SA	WA	TAS (regulator comments included 2006)	NT (regulator comments included 2005)	ACT
Licence cont..				<p>Certificate IV in Property (Real Estate):</p> <p>PRDRE10A PRDRE11A PRDRE12A PRDRE13A PRDRE14A PRDRE22A PRDRE30A PRDRE37A PRDPOD62A</p> <p>To achieve recognition at Certificate IV level, competency must be demonstrated in all 9 specified core unit and 8 elective units (total 17 units).</p>		<p>law of another State or Territory of Australia to carry on the business of a real estate agent in that State or Territory; and</p> <p>(ii) been engaged full time as a real estate agent in another State or Territory of Australia for a total period of at least 2 years during the 5 years immediately preceding the application for the licence; and</p> <p>(iii) satisfied the Council, on examination or inquiry, that he or she has sufficient knowledge and experience of the real estate agency business to be granted a real estate agents licence.</p>		
Eligibility for Real Estate Agent's Licence cont..								
<b>Eligibility for Auctioneer's Licence</b>	Must have completed 2 competencies from the PRD01 Training Package for a provisional	Must have a real estate or stock and station agent's licence endorsed; must hold unit of competency	No licence required.  Any licensed estate agent or an agent's representative can	No equivalent licence.  No licence is required in SA only salesperson	Obtain a real estate auctioneer's licence through the "Commercial Agents Squad" – WA Police Department.	License issued based on satisfying issuing authority by exam that applicant has the relevant knowledge to	Licensed under the Auctioneers Act. Person must be over 18, of good character & fit and proper.	Has educational qualification or is a licensed agent.

ATTACHMENT 1  
REIA SUBMISSION ON PERFORMANCE BENCHMARKING  
DATED 22 DECEMBER 2006

	QLD	NSW	VIC	SA	WA	TAS (regulator comments included 2006)	NT (regulator comments included 2005)	ACT
Eligibility for Auctioneer's Licence cont..	<p>auctioneers licence, namely :-</p> <p>PRDRE39A and PRDRE14A.</p> <p>To obtain a full auctioneers licence, 3 further units of competency need to be completed together with 5 auctions under the supervision of a licensed auctioneer.</p> <p>These units are PRDRE09A; PRDRE26A and PRDRE28A.</p>	PRDRE26A or PRDSS23A.	conduct auctions.	qualification to auction land.	<p>Application is made through the Court of Petty Sessions. Auction licence is granted through a court hearing.</p> <p>To conduct Real Estate auction:</p> <ol style="list-style-type: none"> <li>1. No formal training is required.</li> <li>2. Auctioneer conducts the auction through and on behalf of a Real Estate Agent.</li> <li>3. Any person may obtain a chattels auctioneer's licence and auction chattels.</li> </ol> <p>Renewed annually.</p>	<p>auction.</p>		
<b>Eligibility for Business Agent's licence</b>	No equivalent licence.	Specified units of competency from Business Broking Training Package.	No equivalent licence.	No separate licence or qualifications required.	No separate licence.		<p>A separate licence can apply or a person can obtain a combined real estate &amp; business agent's licence.</p> <p>Applicant must meet eligibility criteria as stated for real estate agent, except for</p>	As for Agents licence.

ATTACHMENT 1  
REIA SUBMISSION ON PERFORMANCE BENCHMARKING  
DATED 22 DECEMBER 2006

	QLD	NSW	VIC	SA	WA	TAS (regulator comments included 2006)	NT (regulator comments included 2005)	ACT
							competency-based training course. As a course is yet to be designed & delivered, the Board will accept former qualification – Certificate IV in Real Estate.	
<b>Eligibility for Property Developer's Licence</b>	The property developer's licence is only required if a developer sells more than 6 residential properties in a 12 month period.  There are no educational requirements to obtain this category of licence.	No equivalent licence.	No equivalent licence.	No equivalent licence.	No equivalent licence.	No equivalent licence.	No equivalent licence.	No equivalent licence.
<b>Eligibility for Restricted Letting Agent's Licence</b>	Completion of 6 units of competency from the PRD01 Training Package, namely :-  PRDRE18A; PRDRE39A; PRDRE10A; PRDRE19A; PRDRE37A and PRDRE28A.	No equivalent licence.	No equivalent licence.	No equivalent licence.	No equivalent licence.	No equivalent licence.	No equivalent licence.	No equivalent licence.
<b>Eligibility for Pastoral House Licence</b>	No prescribed qualifications.	No equivalent licence.	No equivalent licence.	No equivalent licence.	No equivalent licence.	No equivalent licence.	No equivalent licence.	No equivalent licence.
<b>Eligibility for Pastoral House</b>	No prescribed qualifications.	No equivalent licence.	No equivalent licence.	No equivalent licence.	No equivalent licence.	No equivalent licence.	No equivalent licence.	No equivalent licence.

ATTACHMENT 1  
REIA SUBMISSION ON PERFORMANCE BENCHMARKING  
DATED 22 DECEMBER 2006

	QLD	NSW	VIC	SA	WA	TAS (regulator comments included 2006)	NT (regulator comments included 2005)	ACT
<b>Director's Licence</b>								
<b>Eligibility for Pastoral House Manager's Licence</b>	No prescribed qualifications.	No equivalent licence.	No equivalent licence.	No equivalent licence.	No equivalent licence.	No equivalent licence.	No equivalent licence.	No equivalent licence.
<b>Eligibility for Pastoral House Auctioneer's Licence</b>	No prescribed qualifications.	No equivalent licence.	No equivalent licence.	No equivalent licence.	No equivalent licence.	No equivalent licence.	No equivalent licence.	No equivalent licence.
<b>Real Estate Salespersons</b>  Real Estate Salespersons cont..	<p>Must be registered.</p> <p>At least 18 years of age.</p> <p>Completed 4 units of competency from the PRD01 Training package, namely :-</p> <ul style="list-style-type: none"> <li>PRDRE13 A;</li> <li>PRDRE15 A;</li> <li>PRDRE18 A and</li> <li>PRDRE39 A</li> </ul> <p>Employees do not have to be registered if they perform clerical duties only such as collecting and banking rent.</p>	<p>Must be registered:</p> <p>3 specified NSW units of competency;</p> <p>4 different registration categories.</p>	<p>Eligibility for Estate Agent's representative.</p> <p>At least 18 yrs.</p> <p>Passed proscribed course of examinations.</p> <p>Police check &amp; C/T.</p> <p>3 state-based competencies.</p> <p>See requirements under "Suitability for all classes of licences", and</p> <p>Has not been convicted of any offence involving fraud, dishonesty, drug trafficking or violence punishable by 3 months or more imprisonment; and</p> <p>Is not an insolvent under administration; and</p>	<p>Not registered but must:</p> <p>Hold necessary qualifications.</p> <p>Not been convicted of an offence of dishonesty in the last 10 years prior to application.</p> <p>Not suspended or disqualified from practising.</p> <p>Sales Representatives must have completed Cert IV in Property (Real Estate) (see units identified above).</p>	<p>Must be registered.</p> <p><b>Sales Representatives Registration:</b></p> <p>ABH500, ABH501, ABH502, ABH510, ABH522, ABH523, ABH524.</p> <p>TAFE Certificate for Real Estate Sales Representatives; or</p> <p>REIWA Certificate for Real Estate Sales Representative; or</p> <p>Certificate in Real Estate Business and Property Management (Curtin University).</p> <p><b>Sales Representatives Registration (Property Management)</b></p> <p>ABH500, ABH502, ABH510, ABH514,</p>	<p>Must be licensed.</p> <p>Must have satisfy the Council that sufficient knowledge is held (completion of REIT Sales Licensing Course or sit exam with Auctioneers and Real Estate Agents Council).</p> <p>Must maintain licence with 8 hours training per year.</p> <p><i>*May change post the release of new regulations.</i></p>	<p>(Referred to as a registered agent's representative).</p> <p>Must be registered to carry out functions for and on behalf of licensed agent.</p> <p>Person eligible for registration if over 18, fit and proper, holds prescribed qualifications and will be employed by licensed agent within the Territory.</p>	<p>Must be registered.</p> <p>Police check and educational qualifications required.</p> <p>Also the requirements listed under "Suitability for all Classes of License".</p> <p>Must be a qualified property manager.</p>

ATTACHMENT 1  
REIA SUBMISSION ON PERFORMANCE BENCHMARKING  
DATED 22 DECEMBER 2006

	QLD	NSW	VIC	SA	WA	TAS (regulator comments included 2006)	NT (regulator comments included 2005)	ACT
Real Estate Salespersons cont..			Has not been disqualified from holding an Estate Agent's Licence; and  Has not had a claim upheld against the Estate Agent's Guarantee Fund; and  Is not a represented person under the Guardianship and Administration Act 1986.		ABH512, ABH515.  TAFE Certificate for Real Estate Property Management; or  REIWA Certificate for Real Estate Property Management.			
<b>Buyer's Agent</b>	Buyers Agents need to be registered (if working under a licensed agent) or have a full real estate agents licence if conducting their own business as a buyers agent.	Must be registered - licence restricted to the activities of a buyers agent as specified by the Property Stock and Business Agents Act 2003.	If perform, or hold out as willing to perform, estate agency work must be a licensed estate agent or an agent's representative.	Not covered by the legislation.	Buyers Agents need to be registered (if working under a licensed agent) or have a full real estate agents licence if conducting their own business as a buyers agent.	Licensing not required.	Falls within ambit of definition of a real estate agent.	Must be registered.
<b>Property Developer Salesperson</b>	Must be registered as a salesperson and the same requirements apply.	No equivalent.	No equivalent.	No equivalent.	Must be registered as a salesperson and the same requirements apply.	No equivalent.	No equivalent.	No equivalent.
<b>Trainee Auctioneer</b>	Must complete 2 competencies from the PRD01 Training Package for a provisional auctioneers licence, namely :-  PRDRE39A and PRDRE14A.	Trainee Livestock Auctioneers only.	No equivalent.	No equivalent.	No equivalent.	Probationary auctioneer must undertake course and exam with licensing authority.	No equivalent.	No equivalent.

ATTACHMENT 1  
REIA SUBMISSION ON PERFORMANCE BENCHMARKING  
DATED 22 DECEMBER 2006

	QLD	NSW	VIC	SA	WA	TAS (regulator comments included 2006)	NT (regulator comments included 2005)	ACT
<b>Licence lending</b>	Prohibited.	Prohibited.	Prohibited.	Sales representatives need not be registered in SA and can work under the registered land agent.	Prohibited. Licence and triennial not transferable.	Must be able to satisfy substantial attendance in the office.	Prohibited.	Is an offence.
Licence lending cont...								
<b>Substitute licensee</b>	< 30 days, licensee may appoint in writing.  > 30 days Chief Executive must approve another licensee.	An executor may act for not more than 3 months where a licensee has died. Department of Fair Trading may appoint a receiver.	30 days – licensee may give notice in writing to Business Licensing Authority.  Written notice to BLA for short term manager approval.	Not applicable.	Must have a licensee on the premises. If licensee leaves, the corporate entity can obtain three months approval to operate without a licensee until a new one is appointed. Under approval by the Real Estate and Business Agents Supervisory Board.	A temporary manager's permit may be issued to an agent for a sales consultant who is qualified for this purpose to manage an office of an agent for a maximum period of six weeks in any year. To be qualified, the sales consultant must have held a license for a period exceeding two years. In the event that a real estate agent dies, the executor of the estate of the late licensee is deemed to be qualified to hold the license for a period not exceeding 12 months.	Registrar may approve operation of a registered office in absence of business manager for period not exceeding 60 days.	N/A.
<b>Professional indemnity</b>	Discretionary. Required for REIQ	No legislative requirements.	Required for REIV membership.	No legislative requirement.	No requirement in legislation.	Discretionary but required for REIT	Mandatory, unless exempted.	Discretionary but required for REIACT



ATTACHMENT 1  
REIA SUBMISSION ON PERFORMANCE BENCHMARKING  
DATED 22 DECEMBER 2006

	QLD	NSW	VIC	SA	WA	TAS (regulator comments included 2006)	NT (regulator comments included 2005)	ACT
<b>insurance</b>	membership.			Required for REISA membership	Compulsory for REIWA membership.	membership.		membership.
<b>Supervision of business</b>	A principal licensee or an employed licensee must be in charge each place of business.	A principal licensee or an employed licensee must be in charge each place of business.  OFT has specified what consists of 'supervision' under the Supervision Guidelines.	A licensed estate agent must manage an estate agency office.	A natural registered land agent must manage a real estate office.	A licensed estate agent must manage an estate agency office. They must be on site for a significant amount of time. They must be able to show that they give adequate supervision and are in bona fide control.	A licensed real estate agent, real estate manager or authorised sales consultant must manage an estate agency office.	Each licensed agent must ensure there is at all times in the agent's service a business manager who is a licensed agent, in respect of each office of the business carried on under licence.  A person may be appointed to be business manager of more than one office.	Licensed agent must manage business.
<b>Prohibited Practices</b>  Prohibited practices cont...	Only licensees or registered salespersons can make representations to the public regarding properties for sale or for rent.  Only a licensed person can be paid a fee or commission for letting or selling real estate.  Only a licensed property developer or real estate agent can make an "unsolicited" invitation to another person to attend a property information	Only licensees or registered employees can make representations to the public.  Can only share commission with partners/employees and other registered agents.  Must not publish false or misleading information.  Must have Contract for Sale of Land available before marketing commences.	Only licensed estate agents / agent's representatives may make representations to the public.	A land agent and any person in a prescribed relationship to that land agent as defined in legislation is not allowed to undertake any conveyancing.  Must have a written Sales Agency Agreement.  Can only share commission with partners/employees and other registered agents.  Must not make a statement that is false or misleading.	Only licensees or registered salespersons can make representations to the public regarding properties for sale or for rent.  Only a licensed person can be paid a fee or commission for letting or selling real estate.  Must make disclosures if you are a party to the deal.  An agent must not demand, retain or receive a discount or rebate which relates to a service in	Must be licensed to handle property transactions.	Unlicensed persons not to act as agents.	Must be licensed or registered to handle property transactions.  A full list of prohibited practices is contained in the Agent's Act 2003.

ATTACHMENT 1  
REIA SUBMISSION ON PERFORMANCE BENCHMARKING  
DATED 22 DECEMBER 2006

	QLD	NSW	VIC	SA	WA	TAS (regulator comments included 2006)	NT (regulator comments included 2005)	ACT
	session.			An Agent or employees not to have interest in land or business that agent is commissioned to sell.  Not to receive deposit in more than 3 instalments.	connection to the transaction unless the agent has disclosed and obtained written consent to the retaining of the discount or rebate.			
<b>Agency appointments</b>	<p>Must be in writing. Form 22a required in every circumstance.</p> <p>All appointments are to be made on the Government approved document Agents must observe statutory procedures when listing.</p> <p>Exclusive and sole agency appointments are limited to a maximum of 60 days but may be renewed not earlier than 14 days prior to expiry.</p> <p>Use of the proper forms is critical as agency appointments will be rendered ineffective if non-complying documentation is</p>	<p>Terms prescribed in P, S &amp; BA Act and Regulations.</p> <p>Must be in writing to claim commission.</p> <p>Written appointment signed by Principal.</p> <p>Specifies term, period of duration and means of termination.</p> <p>Circumstances in which fees are payable.</p> <p>The amount of the fee or the way it is to be calculated.</p> <p>If residential, agreement must also state the terms specifying both the way in which the licensee's remuneration is to be calculated together with the dollar</p>	<p>Must be in writing to claim commission and outgoings; and</p> <p>Written appointment signed by Principal.</p> <p>Before Principal signs written appointment Principal advised commission and outgoings are negotiable.</p> <p>Written appointment contains details of:</p> <ol style="list-style-type: none"> <li>1. Commissions and outgoings</li> <li>2. Fee as percentage and dollar amount if fee calculated on percentage basis</li> <li>3. Identification of source of any rebate</li> </ol>	<p>Must be in writing (offence if not) and must be in writing to recover commission and expenses.</p>	<p>Must be in writing to claim commission and outgoings; and</p> <p>Written appointment signed by Principal.</p> <p>Before Principal signs written appointment Principal advised commission and outgoings negotiable.</p> <p>Written appointment contains details of:</p> <ol style="list-style-type: none"> <li>1. Commissions and outgoings.</li> <li>2. Fee as percentage and dollar amount if fee calculated on percentage basis.</li> <li>3. Identification of source of any rebate.</li> </ol>	<p>Must be in writing in order to claim or recover commission otherwise the licensee must seek the leave of the court to institute legal proceedings to recover.</p>	<p>Must be in writing and must be signed by all names registered on the title.</p>	<p>Must be in writing.</p> <p>Electronic forms available with conditions on appointment.</p>

ATTACHMENT 1  
REIA SUBMISSION ON PERFORMANCE BENCHMARKING  
DATED 22 DECEMBER 2006

	QLD	NSW	VIC	SA	WA	TAS (regulator comments included 2006)	NT (regulator comments included 2005)	ACT
Agency appointments cont..	used.  Agents must disclose any rebates, business referrals and any perceived conflict of interest.	amount of that remuneration in relation to the licensee's estimate of the selling price of the land; and an estimate of the amount of the expenses or charges the licensee expects to incur and for which they claim to be entitled under the agreement to be reimbursed.  Must state for rural and residential "This fee has been negotiated between the parties."  Terms specifying how licensee is to be reimbursed for expenses and charges.  The Principal must be served with a signed copy of the written agreement within 48 hours.	4. Statement regarding venue for complaint  The Principal must be given a signed copy of the written appointment.  Agents must disclose rebates which must be passed on to principals.  Commission sharing to be disclosed, if commission shared with anyone not employed by selling agent or with whom agent is in partnership.		4. Statement regarding venue for complaint.  The Principal must be given a signed copy of the written appointment.			
<b>Limitation on sole / exclusive agencies</b>	60 days maximum for residential property. May be renewed not more than 14 days prior to expiry.	Nil, but for residential, vendor can terminate agreement after 90 days, with 30 days written notice.	No limit but deemed to be 60 days from date of agreement or 30 days after date of auction if no end date inserted in agreement.	Not applicable.	Nil.	Nil.	Nil.	Nil.

ATTACHMENT 1  
REIA SUBMISSION ON PERFORMANCE BENCHMARKING  
DATED 22 DECEMBER 2006

	QLD	NSW	VIC	SA	WA	TAS (regulator comments included 2006)	NT (regulator comments included 2005)	ACT
<b>Remuneration and Recovery of Monies</b>	An agent may only recover a commission or any other financial reward or benefit if they are:  1. licensed;  2. the licence authorises performance of the particular activity; and  3. the appointment is in writing on the approved form.	Must be licensed.  Only entitled to commission if the appointment is in writing and as prescribed (see Agency Agreement above).  No action or other proceedings for recovery until the expiration of 28 days after a statement of claim has been served on the principal.	See under "Agency Appointments".	As per written sales agency agreement between land agent and consumer.	Subject to written authority.  Selling fee payable only at settlement.	Must be in writing to recover or claim commission.	No recovery of a fee, commission or other gain or reward unless licensed.	As per written agreement.
<b>Commissions</b>	Regulated maximum for residential sales, residential property management, and rural transactions.  Commission must be specified in the agency appointment as a dollar amount or a percentage of the final sale price.  The maximum commission scale is exclusive of GST.  Commission on commercial or business transactions is not regulated.	Deregulated.	Deregulated.	Deregulated.	Deregulated.	Deregulated.  REIT authorised to publish recommended scale as a guide.	Deregulated.	Deregulated.

ATTACHMENT 1  
REIA SUBMISSION ON PERFORMANCE BENCHMARKING  
DATED 22 DECEMBER 2006

	QLD	NSW	VIC	SA	WA	TAS (regulator comments included 2006)	NT (regulator comments included 2005)	ACT
<b>Fees, charges and expenses</b>	<p>An agent may recover specific fees, charges and expenses to be incurred by the agent on behalf of the client.</p> <p>These can be paid in advance or reimbursed by the client upon receipt of an itemised statement of expenditure, and must be detailed in the Appointment to Act ..</p> <p><b>Fees</b></p> <p>A fee is the cost of a service provided by an agent. A fee can be charged for a service not normally considered a part of a real estate agent's prescribed activities when selling, managing or renting properties.</p> <p>A fee could be charged for the following services:</p> <ol style="list-style-type: none"> <li>1. Supervising and inspecting major repairs and renovations;</li> </ol>	Only entitled if in Agency Agreement (see above).	Only entitled to be paid commission & expenses if hold an engagement or appointment hat complies with S.49A, Estate Agents Act 1980.	All fees, charges and expenses must be included in the Sales Agency Agreement.	<p>All fees and recoupment of expenses must be by written agreement and each fee or expense must be initialled by the Principal.</p> <p>Property Management – authority to approve essential repairs (limited).</p>	Not applicable.	Not regulated.	Only entitled if in written agreement.
Fees, charges and expenses cont..								

ATTACHMENT 1  
REIA SUBMISSION ON PERFORMANCE BENCHMARKING  
DATED 22 DECEMBER 2006

	QLD	NSW	VIC	SA	WA	TAS (regulator comments included 2006)	NT (regulator comments included 2005)	ACT
Fees, charges and expenses cont..	2. Lodging building plans, and overseeing building applications;  3. Reading meters;  4. Coordinating advertising consultants, copywriters, photographers, graphic artists and designers;  5. Coordinating a marketing campaign that involves detailed market analysis, project or development feasibilities;  6. Coordinating sales agents who are not employees of the Licensee;  7. Consulting with architects, engineers and designers on behalf of a client; and  8. Providing written reports that do not involve the sale,							

ATTACHMENT 1  
REIA SUBMISSION ON PERFORMANCE BENCHMARKING  
DATED 22 DECEMBER 2006

	QLD	NSW	VIC	SA	WA	TAS (regulator comments included 2006)	NT (regulator comments included 2005)	ACT
Fees, charges and expenses cont..	<p>management or rental of a property.</p> <p>A fee cannot be charged or recovered for any additional agency service unless the client has authorised the agent in writing on the approved Appointment to Act form.</p> <p>An agent is not permitted to charge a consumer a fee relating to the preparation of documents relating to a real estate transaction. This includes tenancy applications, lease agreements, management agreements, sales contracts, written market appraisals (relating to the sale or rental of a property) or listing documentation fees.</p> <p><b>Charges</b></p> <p>A charge is a cost incurred by the agent whilst performing duties on behalf of the client.</p>							

ATTACHMENT 1  
REIA SUBMISSION ON PERFORMANCE BENCHMARKING  
DATED 22 DECEMBER 2006

	QLD	NSW	VIC	SA	WA	TAS (regulator comments included 2006)	NT (regulator comments included 2005)	ACT
Fees, charges and expenses cont..	<p>A charge or cost is fully recoverable by the agent if authorised by the client and provision is made on the Appointment to Act document.</p> <p>Charges are common in a continuing agency. An example of charges might be: * bank fees; * telephone, fax, and postage; * courier services; * photocopying; and* travelling costs for the collection of rent or inspection of properties.</p> <p><b>Expenses</b></p> <p>An expense is where the agent has incurred a financial liability on behalf of the client. An expense could be:</p> <ol style="list-style-type: none"> <li>1. Promotional fees which include advertising and marketing costs;</li> <li>2. Searches;</li> <li>3. Other</li> </ol>							



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REIA SUBMISSION ON PERFORMANCE BENCHMARKING  
DATED 22 DECEMBER 2006

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	<p>consultancy fees such as decorators, tradespeople, pest control, building inspectors etc; and</p> <p>4. Appointment of an Auctioneer.</p> <p>All fees, charges and expenses must be quoted on the Appointment to Act form as GST inclusive.</p>							
<b>Publishing business names in property advertisements</b>	No requirement.	<p>Licensee must publish business name.</p> <p>PSBA Act allows a variation in NSW to publish either:</p> <ol style="list-style-type: none"> <li>1. Business name.</li> <li>2. Partnership name.</li> <li>3. Trading Name.</li> </ol>	Mandatory – must specify name of business and registered office: Estate Agents Act 1980,S.42(1).	No requirement.	Mandatory.	Mandatory.	Act requires agent to advertise that agent is licensed and business address.	Mandatory.
<b>Disclosure of Rebates (to seller)</b>	Any benefit or rebate must be fully disclosed on the Appointment to Act agreement (Form 22).	<p>Disclosure required under Sec 47 to all parties.</p> <p>Must disclose rebates and discounts in the agency agreement.</p>	<p>Any r rebate must be fully disclosed and passed on to principal.</p> <p>See under “Agency Appointments”.</p>	Disclosure is mandatory.	Mandatory.	Discretionary.	Agent is required to declare a beneficial interest in purchase or sale of land.	Rebates or benefits must be disclosed.

ATTACHMENT 1  
REIA SUBMISSION ON PERFORMANCE BENCHMARKING  
DATED 22 DECEMBER 2006

	QLD	NSW	VIC	SA	WA	TAS (regulator comments included 2006)	NT (regulator comments included 2005)	ACT
<b>Disclosure to buyers</b>  Disclosure to buyers cont...	Agents must disclose: 1. Any relationship and the nature of the relationship (whether personal or commercial) with any party to whom the agent refers the buyer for professional services. 2. Whether the agent will benefit from this referral or business relationship, either financially or through other means; and 3. The amount of the financial gain or other benefit to be paid to the agent including any commission or fees to be received from the seller.	Licensee must disclose beneficial interest in property.	Agents must adhere to legal requirements concerning "secret" commissions and conflicts of interest.	Agent to disclose beneficial interest in property.	An agent who recommends to a party to a transaction a service provider, the agent must make written disclosure to the party of any significant relationship, connection or affinity between the agency and the supplier.  Where the relationship, connection or affinity between the agency and supplier is capable of producing a conflict between the interests of a party to the transaction and the agent, the agent shall include in such a written disclosure an explanation of the nature of the potential conflict.		Agent required to disclose a beneficial interest in purchase or sale of land in prescribed form.	Must be disclosed.
<b>Beneficial interest</b>	Beneficial interest must be declared if a real estate agent or salesperson buys a	Sec 49 – disclosure required to all parties.	Prohibited from purchasing property agency engaged or appointed to sell,	Prohibited from purchasing property for which an agency appointment is held	Must have client's written agreement to pay commission. If there is a conflict of	An licensee who wishes to purchase a property listed for sale with the agency	Beneficial interest must be declared.	Beneficial interest must be declared.

ATTACHMENT 1  
REIA SUBMISSION ON PERFORMANCE BENCHMARKING  
DATED 22 DECEMBER 2006

	QLD	NSW	VIC	SA	WA	TAS (regulator comments included 2006)	NT (regulator comments included 2005)	ACT
	property listed with the agency. No commission is payable by the seller.  Real estate agents selling their own properties are not required to declare beneficial interest.		except in accordance with exemption granted under Estate Agents Act 1980, S..55	unless exempted by the Minister.	interest (agent or sales representative is the prospective purchaser of the agent's listing), the agent must disclose the conflict of interest, gain consent to the transaction proceeding.  The seller can agree to pay the agent's commission providing the seller understands they have no obligation to pay that fee.	by whom the licensee is employed is required to make a full disclosure of his/interest, obtain the vendor's written approval and obtain that approval prior to the commencement of negotiations.		
<b>Residential Contracts of sale</b>	Usually prepared by real estate agents.	Usually prepared by solicitor or conveyancer.	Estate agents and solicitors prepare.	Prepared by land agents/ salespersons.	Usually prepared by real estate agents or their sales representatives.	Prepared by sales consultants.	Must be in a form approved by the Registrar.	Prepared by solicitors or agent/salesperson.
<b>Contract warning statement</b>	Must be first page of any residential sales contract.	Yes. Vendors prescribed warranties per Conveyancing Act. Other warnings in Contract for Sale of Land (NSW).	Contained in Contract Note.  Refer to Estate Agents (Contracts) Regulations 1997.	No statutory requirement.	No statutory requirements.	No information provided.	Contract must contain consumer information.	Yes.
<b>Cooling-off periods</b>	A 5 business days cooling-off period applies to all residential sales except sales at public auction (i.e. "under the hammer").  Cooling-off period	5 business days unless waived (s.66W Conveyancing Act requirement).  No cooling off at sale by auction or if negotiated	A 3 clear business days cooling-off period applies <u>except</u> where:  1. The property is purchased at or within 3 business days	2 clear business days from date of issue of Form 1 and signed contract.	Only contracts which are subject to the provisions of the Door to Door Trading Act or Retirement Villages Act	Yes. 2 clear business days except 2 days before day of auction and 2 days after and where there is a waiver option signed.	Four day cooling off period applies.	Yes, 5 working days.

ATTACHMENT 1  
REIA SUBMISSION ON PERFORMANCE BENCHMARKING  
DATED 22 DECEMBER 2006

	QLD	NSW	VIC	SA	WA	TAS (regulator comments included 2006)	NT (regulator comments included 2005)	ACT
Cooling off periods cont...	<p>commences from the time the buyer is notified that the seller has accepted the contract.</p> <p>Buyer may waive or shorten cooling-off period only with a lawyer's certificate.</p>	<p>subsequent to auction but on the same day.</p> <p>Agency agreements have 1 business day cooling off period.</p>	<p>before or after a publicly advertised auction.</p> <ol style="list-style-type: none"> <li>2. The buyer receives independent advice from a solicitor before signing the contract.</li> <li>3. The property is used mainly for commercial or industrial purposes.</li> <li>4. The property is more than 20 hectares in size and used mainly for farming.</li> <li>5. The buyer previously signed a contract for the same property.</li> <li>6. The buyer is an estate agent /agent's representative</li> <li>7. The buyer is a Corporation</li> </ol>					
<b>Discipline</b>	Property Agents and Motor Dealers Tribunal.	Office of Fair Trading.	Consumer Affairs Victoria / Business Licensing Authority /	Office of Consumer & Business Affairs.	All disciplinary functions undertaken by State	Auctioneers & Real Estate Agents Council of Tasmania.	Agents Licensing Board of the Northern Territory.	Office of Fair Trading.

ATTACHMENT 1  
REIA SUBMISSION ON PERFORMANCE BENCHMARKING  
DATED 22 DECEMBER 2006

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	Current licensees and executive officers of licensed corporations prohibited from appointment to Tribunal.		Victorian Civil & Administrative Tribunal (VCAT).  REIV disciplines members via Rules of Practice.		Administrative Tribunal (SAT).  REIWA provides an arbitration and disciplinary service accessible to members and the public.		2 industry members hold office on Board.	
<b>Appeals</b>  Appeals cont...	To the courts <u>only on matters of law</u> .	Appeals may be made in relation to the non-issue or renewal of license, to the Court.	Consumer Affairs Victoria decisions / Business Licensing Authority decisions reviewable by VCAT.  VCAT decisions reviewable by Victorian Supreme Court (questions of law only)  REIV determinations reviewable by an independent arbitrator (Commercial Arbitration Act procedures apply).	District Court of South Australia.	State Administrative Tribunal.	Appeals against a Council disciplinary decision are made to the Magistrates Court.	Local Court.	Consumer and Trading Tribunal.
<b>Codes of Conduct</b>	REIQ has a Code governing "Standards of Business Practice".  Prescribed by Government Regulations. Separate codes for:  1. Real Estate Agents;	Prescribed by Regulations.	Estate Agents (Professional Conduct) Regulations 1997.  REIV:  1. Code of Conduct.  2. Auction Code of Conduct.  3. Commercial	No code of conduct in legislation.  REISA Code of Conduct.	Issued in terms of REBA Act.  Code of Conduct for Agents and Sales Representatives.  REIWA has Code of Practice.	Auctioneers & Real Estate Agents Act and Regulations.  REIT has a member Code of Conduct.  2005 legislation requires an industry-wide code of conduct.	Contained in ALA.	No code of conduct in legislation.

ATTACHMENT 1  
REIA SUBMISSION ON PERFORMANCE BENCHMARKING  
DATED 22 DECEMBER 2006

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	2. Auctioneers; 3. Property Developers; and 4. Restricted letting agents. 5. Penalties up to \$15,000 apply for each and every breach.		Leasing Code. 4. Body Corporate Code of Conduct. 5. Rules of Practice. 6. Rules of Conduct of an Auction.					
<b>Fidelity Funds</b>  Fidelity funds cont...	Claims Fund. Non-contributory. Persons dealing with licensed property developers are precluded from claiming.	Property Services Compensation Fund. Contributory.	Estate Agents Guarantee Fund. Non-contributory.	Agents Indemnity Fund.	Fidelity Guarantee Fund. Managed by Real Estate and Business Agents Supervisory Board (REBAs). All applicants of Sales Registration pay \$45, including each renewal. All applicants for licence pay \$150, including each renewal.	Not applicable from 2006.	Agents Licensing Fidelity Guarantee Fund. Moneys of the Fund are comprised of contributions and levies paid under Act, licence and registration fees, fines imposed by Board, and interest accrued from investment of moneys of fund.	Consumer Compensation Fund.

Prepared by:

REIA Secretariat  
30 June 2006