

REAL ESTATE INSTITUTE OF AUSTRALIA'S SUBMISSION TO PRODUCTIVITY COMMISSION'S ANNUAL REVIEW OF REGULATORY BURDENS ON BUSINESS

BACKGROUND

The Australian Government has asked the Productivity Commission to undertake a series of ongoing annual reviews of the burdens on business of Government regulation. In 2010, the fourth year of review, the Commission will focus on those regulations that impact on the business and consumer service industries which includes real estate.

The Commission has been asked to identify specific areas of Australian Government regulation that are unnecessarily burdensome, complex or redundant or duplicate regulations or the role of regulatory bodies, including in other jurisdictions

The Real Estate Institute of Australia (REIA) is the peak national association for the real estate profession in Australia. The REIA has eight members, comprised of the State and Territory Real Estate Institutes, through which around 80% of real estate agencies are collectively represented. The real estate industry employs approximately 77,000 persons with most agencies having less than 10 employees. The REIA represents an important element of the broader property and construction sector which together makes a significant contribution to Australia's social climate and economic development. Property contributes \$300 billion annually in economic activity.

PURPOSE

The Real Estate Institute of Australia's submission identifies compliance burdens on the real estate industry and foreshadows others as certain Government policies are to be implemented.

ISSUES

Whilst it is acknowledged that this review is focussed on Commonwealth regulation we cannot escape the reality that because Australia is a federation of states and territories, there are overlapping regulatory agencies at state, territory and Federal level. 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 cost and compliance burden on business, and stands increasingly in contrast to the direction of business and workplace reforms, advanced through National Competition Policy and COAG reforms.

Further, all legislation and regulations should have clear objectives, in order to demonstrate intended purpose and benefits.

With nine jurisdictions legislating in the area of real estate practice, there are substantive differences in regulatory requirements. To address this, a multi-government approach to remove anomalies and inconsistencies and to ensure a robust, efficient and effective regulatory framework is required.

Progress will be forthcoming in the area of licensing, as a result of COAG's agreement to the development of a National Licensing System (NLS) to remove overlapping and inconsistent regulation between jurisdictions in the way that occupations are licensed. It is planned that the NLS will commence on 1 July 2012 for the first tranche of occupations which includes property agents.

The regulatory burden on real estate businesses comprises the full range of general small business regulatory requirements; real estate specific requirements; and a number of potential new requirements.

Real Estate Specific

State/territory laws dealing with property transactions across borders are inconsistent, creating an uncertain business and consumer protection environment. The REIA acknowledges that there has been some work in this direction however, progress has been slow in standardising and harmonising property dealings nationally.

A uniform real property act and consistent conveyancing legislation would make transactions far simpler. To address this, the Property Law Reform Alliance (PLRA) - an industry body of which the REIA is a member - was formed. The PLRA is committed to achieving uniformity by pursuing the reform of real property laws and procedures in Australia.

An example of the need for uniformity in property transactions is the recovery of land tax from a tenant. Whether it is recoverable or not and the circumstances under which it is recoverable differs across Australia. In the ACT land tax is recoverable other than in residential tenancies. In Western Australia, by contrast, it is recoverable only for limited amounts under a retail lease. Land tax is not recoverable in Queensland, South Australia, Tasmania or Victoria.

Another area of real estate which highlights the inconsistencies in property law and practice is the failure to register a lease. Northern Territory, New South Wales and Western Australian legislation state that a lease does not achieve indefeasibility until it is registered. Therefore, registration of a subsequent interest or sale of the freehold can affect the tenant's rights to the land. Other jurisdictions are less strict, granting the tenant some rights where the lease is unregistered. In Queensland, while generally leases do not achieve indefeasibility unless registered, there is an exception to this rule which states that the interests of the holder of a registered interest are not paramount over a 'short lease', which is an unregistered lease for a term of three years. Tasmanian legislation has a similar effect, stating that a lease for a term exceeding three years takes effect as an equitable lease only. South Australian legislation states that leases for a term exceeding 12 months must be registered to enjoy indefeasibility. Victorian legislation grants a tenant in possession statutory protection.

The PLRA has demonstrated that, given the will and a spirit of co-operation, it should not be difficult to develop uniform Torrens title legislation that will meet the requirements of all Australian jurisdictions.

In order to bring about reform, the PLRA has had discussions with various Government representatives and Attorneys-General regarding the development of the Model Real Property Act and the need for uniform real property legislation.

General

General regulatory requirements faced by all small businesses such as real estate agencies include preparation, lodgement, and record-keeping associated with matters such as the GST, payroll tax, company tax, worker's compensation, superannuation, Australian Workplace/Fair Work Australia Agreements, privacy, and occupational health and safety. Cumulatively, the paperwork and record-keeping associated with compliance with a plethora of legislation is burdensome and affects profitability of small businesses. This is particularly the case in businesses that are not large enough to employ a person dedicated to these tasks. In the real estate industry, where about 40% of agencies employ less than five people and 75% employ less than ten people meeting regulatory requirements is often undertaken by general administrative staff.

Whilst REIA is aware of the initiative to require a Regulation Impact Statement (RIS), including a cost-benefit analysis, for new Commonwealth Government regulatory

requirements prior to implementation and welcomes the intention, the REIA feels that the application of this requirement has at best been variable and at worst inadequate. The cost-benefit analyses have been superficial and have failed to measure the cost impact of new regulation on small business.

New

There are currently three Commonwealth Government initiatives which are expected to be implemented over the next two years and which, in the view of the REIA, will impose large costs on the real estate sector.

Under the National Strategy for Energy Efficiency mandatory disclosure of residential building energy, greenhouse and water performance at the time of sale or lease will be required, commencing with energy efficiency, by May 2011.

Whilst the responsibility and direct cost of obtaining energy ratings will be met by home owners, agents will have a considerable role, and cost, to play in educating home sellers and landlords and policing their compliance of these requirements and in training their agency staff to ensure that the regulatory requirements are met. To make matters worse a RIS that was expected in January 2010 will not be available till at least May, severely truncating the time to undertake the necessary training and education roles and adding to the burden.

Another Government initiative with significant costs on small business is the proposed Paid Parental Leave (PPL) scheme.

The REIA is opposed to the position currently taken Government that employers should act as paymaster under the proposed scheme.

The PPL scheme as it is currently framed poses a disproportionate disruption for small businesses such as real estate agencies than medium and large enterprises. The administrative burden associated with the role of paymaster places a disproportionately large time and financial cost on small businesses. These costs would be incurred primarily through administering payments, maintaining records, meeting compliance and reporting requirements and undergoing the appropriate system upgrades. The additional burden also increases the possibility of errors or even of non-compliance.

The REIA has thus suggested that Centrelink through its current payments system should be responsible for the administration of direct payments under the PPL scheme.

In addition, the real estate industry will be subject to potentially significant additional regulatory requirements when the proposed second tranche of anti-money laundering requirements are introduced by the Commonwealth Government. The REIA has been pleased to have had the opportunity to provide considerable input to the development

process but until further information is available the regulatory impact on real estate agents will not be clear. However indications from those industries captured by the first tranche are that for small businesses the compliance requirements are quite onerous. As well as the compliance costs, costs associated with training across the industry will be significant for what is, in large part a public benefit.

Indeed this raises the issue of should the Commonwealth Government be providing assistance for the training related to this and any future regulatory requirements which require costs to be borne by small businesses for a public good. The REIA is of the view that Government should.

AREAS for GOVERNMENT ATTENTION

Practical solutions to the problems associated with compliance with the regulatory environment include:

1. ensuring that the definitions of small business, including number of employees, earnings and thresholds, are consistent across all legislation, and are indexed;
2. developing an integrated approach by the three levels of Government to small business and including the small business representatives to review duplication and inconsistencies of legislation as it affects small business;
3. ensuring that the relationship of Government with small business extends beyond the consultation processes established by some agencies to the inclusion of policy makers in the consultation processes prior to implementing new initiatives;
4. provision of training seminars by government agencies to assist with compliance, both at the time of introduction of new regulations, and on an ongoing basis;
5. monetary assistance to small business for in house training associated with major new government initiatives;
6. provision of online lodgement services and associated online help services;
7. better linkages between the information held by different government departments;
8. ensuring regulations are not duplicated at federal and state level;
9. specific consideration being given to the likely impact on small business when new regulations are being introduced, including a cost benefit analysis which identifies those that are beneficiaries and those that meet the cost;
- 12 reviewing legislation governing real property transactions to ensure it is uniform nationally across Australia;
13. reviewing legislation governing real property transactions to ensure it reflects the contemporary business environment and takes into consideration the impact of technology on regulation.

SUMMARY

Regulation governing real estate businesses in Australia is both generic to all businesses and particularly small businesses, and specific to real estate businesses.

Because the majority of real estate agencies are small businesses, the compliance burden associated with government regulation is considerable.

This is further compounded by inconsistencies in the regulatory environment across the Federal and eight State and Territory jurisdictions.

Harmonisation of the regulatory environment nationwide would be a significant step forward in reducing costs on business.

PREPARED BY

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