

REAL ESTATE INSTITUTE OF AUSTRALIA'S RESPONSE TO THE PRODUCTIVITY COMMISSION'S DRAFT RESEARCH REPORT ON ITS 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 focused on those regulations that impact on the business and consumer service industries which includes real estate.

The Commission had 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.

RESPONSE TO DRAFT RESEARCH REPORT

The format of REIA's response to the Draft Research Report takes is to identify the relevant Chapter and Recommendation in the Draft Report and then provide a response.

CHAPTER 2: FINANCE ISSUES

Draft Recommendation 2.1

The Australian Government should improve the transparency and accountability of its consultation processes by:

- **incorporating a 'consultation' Regulation Impact Statement in the regulation-making process (in a similar manner to the COAG requirements) for use in public consultation**
- **requiring the Office of Best Practice Regulation to extend its monitoring and reporting to the quality of consultation, by explicitly reporting on compliance by departments and agencies with the best practice consultation principles**
- **using confidential consultation processes only in limited circumstances where transparency would clearly comprise policy outcomes.**

The REIA supports Draft Recommendation 2.1.

The REIA believes that whilst the basis of the Commission's recommendation relates to the finance sector and developments post the Global Financial Crisis rather than on general experiences, the REIA indicated in its initial submission to this review that:

- *the application of the requirement for a Regulation Impact Statement (RIS), including a cost-benefit analysis, for new Commonwealth Government regulatory requirements prior to implementation was in the REIA's view at best 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.*

CHAPTER 3: TOURISM AND HOSPITALITY RELATED SERVICES

Draft Recommendation 3.1

The Australian Government should index monetary thresholds applying to all overseas investment in developed non-residential commercial real estate on the same basis as the thresholds applying to other types of overseas investment in Australian businesses.

The REIA supports Draft Recommendation 3.1.

The REIA believes to not implement this provides for a distortion and leads to resource misallocation.

Draft Recommendation 3.2

The Australian Government should remove the monetary threshold applying to proposed overseas investment in heritage listed non-residential commercial property. Such properties should be subject to the same threshold at which Foreign Investment Review Board assessment is required for proposed investment in developed non-residential commercial property not subject to heritage listing.

The REIA supports Draft Recommendation 3.2.

The REIA believes that having a different threshold for heritage listed non-residential property imposes additional costs on potential buyers with no offsetting benefit.

Draft Recommendation 3.3

The Australian Government should amend the Trade Practices Act 1974 to have restaurant and cafe menu surcharges for specific days placed outside the scope of the component pricing provisions of that legislation.

The REIA supports Draft Recommendation 3.3.

The REIA believes that should Draft Recommendation 3.3 be accepted and implemented other sectors that perhaps were unintentionally captured by the component pricing provisions, will also seek to be placed outside the scope of the legislation. This requirement has also placed additional costs on real estate agents without any apparent significant additional benefit to consumers.

CHAPTER 4: REGULATORY BARRIERS FOR OCCUPATIONS

Draft Recommendation 4.5

COAG's Business Regulation and Competition Working Group should, in consultation with relevant Ministerial Councils, oversee the development of a Uniform Real Property Act. The provision of the Act, once agreed, should then be adopted in all Australian jurisdictions, with any variation to be kept to a minimum and subject to public interest test.

The REIA supports Draft Recommendation 4.5.

The REIA is pleased that the Productivity Commission recognises that inconsistent state and territory real property laws are creating an uncertain business and consumer protection environment and that it supports the work underway through the Property Law Reform Alliance (PLRA) to harmonise state and territory real property laws.

However, as noted by the Commission, the PLRA has been making representations on this issue, over a number of years, to State and Federal Government Attorneys-General and officials.

Accordingly the REIA suggests that the Draft Recommendation be amended to identify this as an issue requiring immediate and sustained action by the COAG Business Regulation and Competition Working Group. The issue requires considerable impetus and the investment of resources to achieve greater consistency in laws and procedures and lower property transaction costs. The public good benefits justify the allocation of Government resources.

CHAPTER 6: OTHER ISSUES

The REIA Submission to the Review identified the trend by the Federal Government to impose costs and administrative burdens on real estate agents as it implements initiatives. Three such initiatives which will impose large costs on the real estate sector were highlighted:

- **the mandatory disclosure of residential building energy efficiency, greenhouse and water performance at the time of sale or lease will be required, commencing with energy efficiency, by May 2011;**

The REIA Submission to the Review indicated that whilst the responsibility and direct cost of obtaining energy ratings will be met by home owners, agents will have a considerable role, and incur considerable costs 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.

Since making that submission it now appears that a RIS that was expected in January 2010 will not be available till the second half of 2010 severely truncating the time to undertake the necessary training and education roles and making the cost burden on a sector dominated by small business more acute. This is against a background where market feedback from buyers and renters of existing dwellings clearly indicates that relative energy efficiency is a low priority factor in their decision making.

- **the recently legislated Paid Parental Leave (PPL) scheme;**

The REIA Submission also identified the, now legislated, Paid Parental Scheme (PPL) as imposing a considerable burden on real estate agents who are required to act as paymaster as well as fulfill compliance requirements. The PPL scheme as it is currently framed poses a disproportionate disruption for small businesses such as real estate agencies more than medium and large enterprises. The administrative burden associated with the role 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 unintentional non-compliance.

- **the proposed second tranche of anti-money laundering requirements.**

The regulatory burden of anti-money laundering requirements, under the proposed second tranche, was also raised in the REIA submission. 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. Certainly the Commissions Draft Report confirms that this has been the experience other small businesses captured in the first tranche. Further the risk of the activities real estate agents undertake being used for money laundering or the financing of terrorism activities are disproportionately small compared to the burden on their business.

The REIA was disappointed that whilst the Productivity Commission did acknowledge that mandatory disclosure of energy efficiency rating and anti-money laundering requirements may impose regulatory costs on the real estate profession it was stated that these were “strictly out of scope for this review, because.....they do not relate to existing regulation”.

The REIA was raising the general issue of Federal Government’s expectation that real estate agents are increasingly being asked to play an unpaid role in administering Government initiatives. Whilst at the time of drafting the PPL Scheme had not been legislated it has now, yet the Commission made no comment on the regulatory burden this may impose.

The Draft Report discusses the Do Not Call Register and notes that the Government has announced that it will not proceed with a proposal to extend the Register to include business numbers. The Commission then suggests that should this position be reconsidered by Government that a RIS encompassing a comprehensive cost benefit analysis be required.

The REIA suggests that the Commission should make a recommendation to this affect in the Final Report to ensure that this is not overlooked.

PREPARED BY

Secretariat
Real Estate Institute of Australia

July 2010