



Submission

National Licensing Decision Regulatory Impact Statement

To: The Hon. Anthony Roberts MP
Minister for Fair Trading
Level 36 Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2000

REINSW Submission – National Licensing Decision Regulatory Impact Statement

Introduction

This submission by the Real Estate Institute of New South Wales (**REINSW** or the **Institute**) is in response to the Decision Regulation Impact Statement for National Licensing for Property Occupations (**Decision RIS**) published by the Council of Australian Governments' National Licensing Steering Committee.

The REINSW is the largest professional association of real estate agents and other property professionals in New South Wales. The REINSW seeks to promote the interest of members and the property sector on property related issues, and in doing so the REINSW believes it has a substantial role in the formation of regulatory policy in New South Wales.

The REINSW appreciates the opportunity to lodge this submission and welcomes discussion of the issues raised by this submission.

The REINSW has lodged a submission (**First REINSW Submission**) in response to the Consultation Regulation Impact Statement (**Consultation RIS**) and notes that its submission has been referenced in parts of the Decision RIS. The Institute will endeavor not to repeat matters raised in the First REINSW Submission, other than by reference to the First REINSW Submission and this present submission will focus on issues arising out of the Decision RIS. A copy of the First REINSW Submission is attached for ease of reference.

Although the Institute is pleased to see from the Decision RIS that there has been some further development in the proposed model for national licensing of property occupations as compared to the model presented in the Consultation RIS, there are still a number of concerns stemming from the model put forward in the Decision RIS. These are discussed below.

National system

It is noted that the Decision RIS reiterates the position in the Consultation RIS, including the fact that the ultimate outcome will be that licensing will not be uniform throughout all jurisdictions and that Western Australia and the Australian Capital Territory are yet to commit to the national licensing model. It is also noted that some jurisdictions plan to retain existing licences which will not be part of the national model, whereas other jurisdictions will not be licensing scopes of work they currently do not license, even if those scopes of work will be regulated under the national scheme. REINSW repeats its concerns set out in the First REINSW Submission in that the system proposed is not actually a national system.

Labour mobility

One of the main stated objectives for introduction of national licensing is to increase labour mobility. It is submitted this objective will fail unless conduct rules are also harmonised across all jurisdictions. As noted in the First REINSW Submission, a harmonised regulatory environment should come as a pre-cursor to harmonising the licensing regime – to do otherwise would lead to the absurd situation of having national licences and a uniform training program for licensees, but different sets of practice rules for each state. The efficiencies of having some

similar categories of licensed work will be small compared to the costs of re-skilling professionals in another jurisdiction's conduct requirements.

The Decision RIS states on page x of the Executive Summary one of the problems associated with a mutual recognition system:

Furthermore, not all licensees have an equivalent licence in other jurisdictions, and some occupations (or areas of work within occupations) are not licensed in all jurisdictions. In these cases individuals may be required to be licensed where they were previously not required to be, or they may need to apply for a new licence because there is no equivalent to the licence they currently hold.

It is submitted that the model for national licensing proposed in the Decision RIS will not cure this problem, given that states which currently do not license a scope of work will not be required to license it under the national model and that some jurisdictions will retain licences for work which will not be licensed nationally.

On pages 72 and 73 the Decision RIS talks about labour mobility on a short-term basis. It is submitted that, given it takes significant time and additional education for professionals to become familiar with the conduct rules in another jurisdiction, short-term fly-in fly-out labour arrangements will not be feasible unless the conduct rules are harmonised.

The Decision RIS on page x of the Executive Summary also states:

In addition to the burden of red tape on licensees from the very different approaches, governments must retain oversight of their own regulatory regime while maintaining an understanding of how other regimes work in order to recognise interstate licenses. These multiple approaches are economically inefficient for a nation of fewer than 23 million people.

It seems from the above statement that NOLA is mainly concerned with reducing the burden on governments and that the costs and burdens on licensees and consumers are not considered. Whilst the proposed national model might result in a reduction in costs for governments in that they will no longer be required to maintain an understanding of multiple licensing regimes, ongoing multiple sets of conduct rules will mean that the burden of ascertaining whether a licensee is qualified to operate in a particular jurisdiction is now shifted onto licensees and consumers. It is the role of governments as the regulators of licensees and the bodies having responsibility for consumer protection to ensure that licensees coming from another jurisdiction have the appropriate knowledge and qualifications to operate in the new jurisdiction.

Non-residential agency work

The Institute is pleased to see that agency work in connection with non-residential properties and rural properties has been reinstated as regulated real estate agency work. However, the REINSW is concerned regarding the proposed exemptions.

It is noted that one of the criteria for exempt non-residential work is that the real property "has an estimated contract price of at least a prescribed amount or has an area greater than a prescribed area". It is submitted that a determination of the estimated contract price based on the agent's subjective opinion will be problematic as there is a potential to over-estimate values so the transaction is conveniently placed outside the regulatory regime. Setting the value of the prescribed amount will also be problematic – would there be separate values for sale transactions, leasing transactions, property management contracts etc?

It is not clear from the Decision RIS how it is proposed that these transactions be monitored to ensure compliance. The cost of monitoring and enforcement is also not considered in the Decision RIS.

It is also noted that the proposal is considered in the Decision RIS from the perspective of the vendor or lessor and their agent, but not from the perspective of the purchaser or lessee, who, although not the agent's principal, is nonetheless affected by the agent's conduct. The Decision RIS also does not recognise that in a commercial property transaction one party might be a 'sophisticated' party whereas the other party might not be (for example, the owner of a large shopping centre and the tenant of a small shop). This is another example of why placing monetary parameters on the exemptions will be problematic.

The discussion for the rationale for the proposed exemptions does not take into account the impact on the handling of trust monies by agents in a commercial transaction. The larger the value of the transaction, the greater the amount of monies held by the agent on behalf of the parties is likely to be.

As stated in the First REINSW Submission, the Institute strongly opposes any exemptions for non-residential agency work.

Employees of strata managers

It is baffling to see that it is proposed to exempt employees of strata management agents from licensing requirements. This proposal evidences NOLA's lack of understanding of this complex, highly regulated and very specialised area of agency work. A strata manager is expected to not only have agency and management skills, but to also possess financial acumen and sound accounting skills. In a rapidly-growing sector of the property industry employees of strata management agencies have access to large sums of money held on behalf of owners' corporations and are tasked with other duties which require a high degree of knowledge, skill and responsibility.

It is submitted that the burden of being held accountable for the actions of unqualified employees should not fall on the employer/licensee, as is suggested in the quote from Strata Communities Australia on page 38 of the Decision RIS. It is the responsibility of the regulator to ensure that when people enter an occupation in a heavily regulated industry, where mistakes can significantly adversely affect consumers and result in massive financial losses, they have the appropriate qualifications. The requirements for a strata managing agent's representative should be no different from the requirements for a real estate agent's representative. There is no reason why the supervision and management requirements to which strata management licensees are subject should more onerous (by reason of having to educate, supervise and be held accountable for the actions of unqualified employees) than the requirements to which the holders of real estate agents' licences are subject.

Short term residential letting and on-site residential managers

REINSW is of the view that persons who carry on short-term residential lettings of less than 3 months should not be exempt from the licensing regime. Holiday and short-term letting agents collect deposits and letting fees on behalf of owners and have access to owner's properties, including whilst tenants are in occupation. Some on-site managers are based permanently in a building occupied by owners or long-term tenants and have access to owners' contributions for the repair, maintenance and general running of the building. Bearing these responsibilities in mind, it is submitted that persons engaging in short-term lettings and on-site property managers should also be subject to licensing and the associated probity requirements.

It is not clear why in the Decision RIS it is considered that payments made by credit card transaction are at a lesser risk of being wrongly applied or misappropriated.

Stock sales

The Institute reiterates its views expressed in the First REINSW Submission regarding the desirability for maintaining licensing for agents conducting stock sales.

Continuing Professional Development

The Institute reiterates its strong views expressed in the First REINSW Submission regarding the desirability of mandatory continuing professional development and the benefits to the profession and consumers.

Changes in legislation happen frequently and rapidly. It is not clear from the Decision RIS how NOLA proposes to respond each time this occurs to develop appropriate responses to changes in the regulatory environment, industry climate and consumer expectations.

Age and experience requirements

The REINSW reiterates its view in the First REINSW Submission regarding the issue of age and experience requirements for licensees. It is submitted that school students should not be precluded from undertaking vocational training or working under the supervision of a licensee, however given the potentially serious legal implications for consumers, persons under the age of 18 should not be permitted to hold a licence or operate a business or trust accounts.

On page 53 in the rationale as to why experience requirements should not apply, the Decision RIS states:

As noted above, eligibility requirements based on a national training package qualification should not need additional experience requirements as the applicant has already been deemed competent.

Further, on page 56 the Decision RIS states:

Age does not necessarily provide knowledge and experience; an applicant for a real estate agent's licence could be over the age of 18 years and not have any experience in the real estate market.

The above statements are concerning as they seem to imply that NOLA considers it acceptable for a minor with no experience to represent to a consumer that they have the relevant maturity and qualifications to act on a real estate transaction. A consumer is entitled to assume that the professional they engage is legally able to do anything a licensee is able to do. Where a consumer suffers losses at the hands of a person under the age of 18 it is not sufficient or acceptable for the regulator to disclaim responsibility for its policing function by directing the consumer to turn to their 'broader legal protections'. This is tantamount to deregulating the conduct of minors acting on real estate transactions.

In the discussion about the benefits to licencees of the removal of experience requirements on page 80 the Decision RIS states:

The direct benefit to licence holders of removing experience requirements could be measured, for example, by the wage difference between licensed real estate agents and agent's representatives.

It is submitted that a prudent employer would nonetheless take into account the experience of a potential employee when setting the remuneration. The value of experience is undeniable.

Consumer impacts

The focus in the Decision RIS is on the claimed benefits for the property professionals and on the money they will save due to reduced educational requirements and not having to pay multiple license fees. A very small proportion of the Decision RIS (one and a half out of the total 264 pages) is dedicated to consideration of the impact of the proposed reforms on consumers. It is submitted that the regulator's main concern should be the protection of consumers rather than the convenience of licensees.

On page 92, the Decision RIS states:

Several changes are administrative in nature and do not alter the coverage of licensing across the industry (that is, they do not remove a person from licensing altogether).

The Decision RIS fails to consider the impacts on consumers of lowering qualification and ongoing professional development requirements, removal of the minimum age requirements and the total removal of licensing for certain areas of agency work.

It is also apparent that NOLA has not fully understood the reasons why the various REIs are insisting on higher qualification requirements for licensees. Clearly, the connection between an agent being appropriately qualified to operate a successful business and the follow-on benefits to consumers has been missed. The business risk associated with the operation of an agency does not affect only the licensee, but also the employees and customers of the business. Business failure is inextricably linked to significant consumer losses, as many of the trust account defalcation cases will bear witness to. To cite lowering the barriers to entry and maintaining low costs and time requirements for the starting of a business is to take a short-term tunnel view and ignore the fact that the majority of new businesses statistically fail within the first five years due to the operator's insufficient business knowledge.

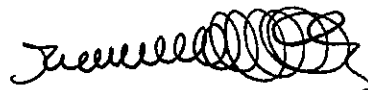
Conclusion

It is disappointing to see that the consistent industry feedback on the Consultation RIS has not been embraced and adopted when constructing the national model. The national licensing regime as set out in the Decision RIS may result in some conveniences for government and minor savings for licensees. However the cost of these savings will be a deterioration in the aggregate professional skills and knowledge of property professionals nationally and adverse consumer outcomes. The REINSW appreciates the opportunity to comment on the national licensing reform and would welcome the opportunity to discuss it further.

8 August 2013



Tim McKibbin
Chief Executive Officer
Real Estate Institute of New South Wales



Eva Sklavos
Legal & Policy Manager
Real Estate Institute of New South Wales

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Submission

National Licensing Consultation Regulatory Impact Statement

To: COAG National Licensing Taskforce
Department of Industry, Innovation, Science, Research and Tertiary Education
info@coagskillstaskforce.gov.au

Introduction

The Real Estate Institute of New South Wales (**REINSW** or the **Institute**) submission is in response to the Consultation Regulation Impact Statement for National Licensing for Property Occupations (**RIS**) published by the Council of Australian Governments' National Licensing Steering Committee.

The REINSW is the largest professional association of real estate agents and other property professionals in New South Wales. The REINSW seeks to promote the interest of members and the property sector on property related issues, and in doing so the REINSW has a substantial role in the formation of regulatory policy in New South Wales.

The REINSW appreciates the opportunity to lodge this submission and welcomes discussion of the issues raised by this submission.

General

The Institute considers that the protection of consumers of real estate services should be a paramount consideration in the development of a national licensing system. The emphasis should be on licensing all facets of agency work, solid qualifications as a pre-requisite to licensing across the board and regulated continuing professional development requirements - all of which would demonstrate a recognition that, in both the residential and commercial sectors, real estate professionals deal with clients' often most valuable assets.

The Institute strongly advocates for mandatory continuing professional development as a prerequisite of certificate and licence renewal. The Institute's position on this issue is consistent with the vast majority of other professions' practise obligations within Australia.

The complexity of property transactions is continually increasing. Consumer expectations of the levels of service to be provided by property professionals are also growing. It is alarming to see that the RIS proposes to substantially reduce the entry-level education requirements for some facets of practise, to de-licence completely other practise areas and to abolish regulated continuing professional development.

The RIS fails to consider the cost to the consumer of reduced education requirements and de-licensing of non-residential agency work, including the consequent loss of income to the Property Services Compensation Fund and the resulting loss of consumer protection. The REINSW believes that the current direction of the RIS, if embraced nationally, will lead to adverse outcomes for consumers, the industry and property professionals.

REINSW position

The REINSW submits that in developing a national licensing system for property occupations the protection of the consumers of real estate agency services should be the primary consideration. On this basis the Institute strongly opposes several of the proposals in the RIS, namely:

- the removal of licensing requirements for non-residential agency work;
- the removal of licensing requirements for the sale, purchase and auction of livestock; and
- the proposal that agents will not be required to undergo continuing professional development (CPD) as a condition of renewing their licences and certificates.

The Institute also submits that:

- the educational requirements for licensees should be prescribed at least at Diploma level;
- there should be a requirement for a minimum period of industry experience before a certificate holder is eligible to apply for their licence and operate unsupervised;
- agents should be required to take out and maintain professional indemnity insurance as a condition of issue and maintaining of their licence; and
- the trading of water rights should also be licensed.

National Licensing

The REINSW welcomes and supports the concept of national licensing for property occupations, however this support is conditional on creating the best system for the industry, consumers and the profession. The RIS on page xv of the Executive Summary talks about "each of the jurisdictions agreeing to a common set of licence categories and eligibility requirements so that there is one system and agreed requirements operating throughout the country". REINSW is supportive of this, provided that the regulatory environment is also harmonised across all jurisdictions.

However on examination of the RIS it quickly becomes apparent that, if the licensing model proposed by the RIS is implemented, it will be far from a truly national unified model. For example:

- In some jurisdictions it is intended to have/retain licence categories additional to those proposed under the national licensing model (such as the pastoral house licence in Queensland).
- It is proposed that some jurisdictions which currently do not license certain categories of work will not be required to license those types work under the national system (such as strata management work in Queensland, South Australia and Tasmania).
- Some jurisdictions have indicated they will retain different entry-level qualification requirements than those proposed under the national licensing model.
- It is also of concern that Western Australia and the Australian Capital Territory are yet to commit to the national licensing model.

It is submitted that these factors are not indicative of, or conducive to, a unified national approach. It is apparent that there is a long way to go before the various jurisdictions are in agreement as to how to proceed nationally.

It is therefore difficult to see how the national licensing model proposed under the RIS differs from or is more beneficial than the alternative automatic mutual recognition model discussed in the RIS.

The Institute submits that the licence categories under a national system should cover all scopes of work of a real estate agent, not just residential real estate work. All licence categories ultimately regulated under the national licensing system should be implemented nationally and the same licence categories should apply in all jurisdictions. The REINSW sees no benefit to nationalising the licensing system unless the system ultimately developed is a truly national system.

It is submitted also that the harmonisation of the laws governing the property professions should come as a precursor to national licensing. A system cannot be truly national if different sets of laws continue to apply in the various jurisdictions. Consumers will be placed at a greater risk in an environment where agents believe they have the national qualifications because national licensing applies but different sets of laws continue to apply in different jurisdictions. Unless the conduct laws are harmonised, agents wishing to practise in another jurisdiction will have to learn the local conduct laws in that other jurisdiction – this is not conducive of labour mobility.

The RIS estimates at page 44 that it will take 45 minutes for licence holders to understand any new obligations, changes to licensing requirements or scopes of work under national licensing. The feedback from REINSW's experienced trainers is that this is a gross under calculation. If national licensing proceeds without the appropriate harmonisation of legislation and conduct requirements, agents will need to spend significant amounts of time trying to understand the very complicated array of differing legislation which applies across the several jurisdictions. This is fraught with risk both for agents and consumers.

Entry-level qualifications

The Institute is supportive of national licensing and the harmonisation of the regulatory environment within which real estate professionals deliver their services. That support however is contingent upon COAG developing a training framework for entry into the profession that equips the property professional with the requisite skills to deliver a competent service that meets consumer expectations. Equally importantly, the aspiring property professional has an expectation that the training they will receive will prepare them to respond to consumer and regulatory requirements in the market. If that expectation is not met then the trainee entering the market is effectively being set up for failure and consumers are being placed at risk.

Real estate agency professionals are in a position of trust and confidence and have fiduciary obligations to their clients. The consumer expectation of such professionals is that they will have sufficient and current qualifications to be able to discharge their duties with due care and expertise.

The Institute is of the view that entry-level qualifications for agents should be set at a minimum of diploma level. This will ensure a better prepared property professional, and better protection and better outcomes for consumers. To effectively achieve this, sufficient time will need to be allowed in order for those jurisdictions that currently do not require a diploma level qualification to transition to it.

There should also be a requirement for a minimum of 12 months' working experience as a pre-requisite to a certificate-holder becoming a licensee. Practical experience is an invaluable component of a professional's development and would give both consumers and professionals the confidence to know that the competencies learnt in training have been proven and applied in practice before the real estate professional becomes entitled to operate unsupervised. Practical experience is a pre-requisite to the attainment of qualifications for a lot of professions and occupations, and the real estate agent's profession should be no exception.

It is submitted that it should be a requirement for auctioneers to obtain a full qualification as applicable to agents' licences. Auctioneers need to understand real estate and have an in-depth knowledge of the real estate industry and all types of real property (including residential, commercial, rural, industrial etc.). Auctioneers should be familiar with real estate and contract laws as they have the capacity to bind the parties to the contract for sale.

Continuing professional development

The RIS does not address the potential cost to the consumer and the profession of the removal of the requirement for agents to undergo CPD as condition of maintaining their licence. Other professions require members to undergo CPD and the consumers of real estate services are entitled to have the assurance that their agent is legally required to keep up to date with the latest industry and legislative developments.

It is submitted that inadequate policing/auditing of compliance with CPD requirements has contributed to a situation where evasion of obligations has become commonplace and therefore the positive impacts of having the CPD requirements in place are less apparent than if there were full compliance.

In considering the impact on licensees the RIS fails to take into account that the lowering of entry-level educational requirements and the removal of the requirements for CPD cannot have a positive impact on licensees as this will only result in the erosion of consumer confidence in the ability of the profession to deliver sound outcomes.

De-licensing non-residential work

The REINSW vehemently opposes the suggestion that work relating to non-residential property should not be licensed and strongly disagrees with the rationale set forward in the RIS for deregulation of non-residential agency work.

The RIS seems to suggest that anyone at any age with no qualifications, experience, business or financial skills and with no requirements for probity checks can undertake non-residential agency work. Therefore a

15-year old who is not yet permitted to drive a car can become an agent dealing with the life savings of family investors or multi-million dollar assets.

It is nonsense to say that commercial real estate work is to be exempt from licensing requirements whereas business agency work will be regulated. Both kinds of agency work take place in a similar context and environment.

The RIS claims that there are "few complaints to consumer protection agencies" in relation to non-residential property transactions. The Institute submits this is not necessarily indicative of parties taking their disputes to another avenue as claimed in the RIS, but could equally mean that commercial real estate agents are simply conducting their businesses in a professional manner in a licensed environment.

The RIS fails to recognise that the parties to a lot of transactions involving property used for non-residential purposes are not sophisticated business people necessarily accustomed in dealing with commercial real property - there are many small or family business operators who buy or lease commercial property to operate their business from or as an investment. The RIS also fails to acknowledge that the parties affected by the work of a commercial real estate agent are not only the large companies and institutions with unlimited legal budgets at their disposal, but also the smaller and often less sophisticated vendors, purchasers and tenants who transact with such corporations.

The RIS provides no definition of what "non-residential property that is used primarily for the purposes of industry, commerce or primary production" means and makes no mention as to how work in connection with mixed-use properties (of small and large scales) will be treated and where they would fit in the licensing regime. This will lead to confusion within the industry and among consumers, the potential for interpretations based on convenience rather than legal principle and the placing of consumers at greater risk.

To de-license non-residential work will lead to the absurd situation where the parties to a \$10-million sale and purchase of a luxury residence have more consumer protection (including access to the property services compensation fund remedy and the agent's professional indemnity insurance) than the parties to a \$300,000 corner-store sale and purchase!

The Institute is of the view that in the interest of consumer protection the purchasing, auctioning and selling of livestock should be licensed. These activities are currently licensed in most jurisdictions either as a stand-alone license category or as part of a broader license category.

The RIS makes assumptions that "the seller (and buyer) will have a high level of business acumen" and that the "livestock community is relatively small and the buyer and seller often know each other" without proffering evidence for these assumptions. In any event, the focus should be on whether the auctioneer has the necessary qualifications to carry out the transaction in the best interest of the client, not on the qualifications of or relationship between the vendor and the purchaser.

In addition, given that the majority of the jurisdictions propose to retain a separate goods and chattels and livestock licence category, this should be made a national category. To have a licence category in some jurisdictions only and not nationally defeats the purpose and benefits of the national licensing model.

The RIS on page 16 states:

The rationale for proposing separate categories is to ensure that specialized skills associated with the works of real estate agents, business agents and strata managing agents are recognised and the licensing requirements provide for training in those specialized skills.

The REINSW submits that the same rationale should be applied to the licensing of stock and station agents and commercial agents. This will also ensure that consumers of all types real estate services are protected, not just consumers of residential real estate services.

To remove the requirement for licensing of commercial real estate work, livestock sales and auctioning fails to recognise the specialised skills and knowledge required to carry out these types of work. It would also devalue the substantial investment made by existing licensed commercial and industrial agents, livestock agents and auctioneers in their education and their businesses, and would expose consumers to the risks associated with having persons without the necessary qualifications carry out these categories of agency work.

The RIS does not account for the cost to consumers of non-residential property agency services in having to become more discerning in trying to find an agent as consumers will not have the assurance of dealing with a licensed professional.

The removal of the several categories of licence will also mean that licence fees and contributions to the property compensation fund for those categories of work are not collected and this consequentially deprives consumers of those types of agency services of access to the property services compensation fund remedy. The income received into the property services statutory interest account will also be reduced if there is no requirement for agents engaged in non-licensed work to keep a trust account.

Professional indemnity insurance

The Institute has for some time now advocated that in the interest of consumer protection all licensees should maintain appropriate levels of professional indemnity insurance. The REINSW has applauded the proposal introduced by the Minister for Fair Trading The Hon. Anthony Roberts that from 1 January 2013, all licensees under the *Property, Stock and Business Agents Act 2002 (NSW)* will be required to hold a minimum of \$1 million in professional indemnity insurance. The Institute has provided a submission in support of this proposal.

Professional indemnity insurance is an accepted and essential risk management tool to help protect consumers when utilising the services of professional advisors. For real estate business owners, it is also an essential means of financial protection against claims made while delivering their professional services.

In NSW, the majority of service providers connected to the property sector, including conveyancers and legal practitioners, are required to carry professional indemnity insurance. REINSW believes that it would come as a complete surprise to many consumers that real estate agents in NSW have, until now, not been required to carry this type of insurance.

The Institute submits that by legislating for mandatory professional indemnity insurance for licensees consumers will have a much better avenue for redress and compensation for their loss in the event of negligence or wrongdoing on the part of an agent.

Another consequence of de-licensing areas of agency work will be that agents working in those fields will be able to avoid the obligation to maintain professional indemnity insurance and accordingly that avenue of consumer protection will be lost.

Probity requirements

The REINSW considers that in addition to the personal probity requirements proposed in table 3.8 of the RIS, licensees should be subject to checks and declarations as to whether the person has been the subject of disciplinary action, whether they are disqualified from holding a licence, and as to the person's mental capacity (as it is currently required pursuant to section 16(1)(f) of the *Property, Stock and Business Agents Act 2002* (NSW)). The Institute also considers that the issue of whether the licensee is of good fame and character is relevant to determining their suitability to act as a real estate agent.

The REINSW is of the view that the same personal probity requirements in respect of agents should also apply to agent's representatives and auctioneers. All licence categories under national licensing should be subject to the same personal probity requirements.

The REINSW is of the view that the financial probity requirements as set out in Table 3.9 of the RIS in respect of real estate, business and strata managing agents should also apply to agent's representatives and auctioneers. All licence categories under national licensing should be subject to the same financial probity requirements.

It is once again submitted that consumers will be placed at greater risk if areas of agency work are de-licensed as consumers will be dealing with individuals who will not be subject to the probity checks.

Water rights

Water rights are frequently transacted separately from the transaction of land rights, however they are always connected to land. The existence and extent of the water rights a property enjoys (in most cases rural properties) have the ability to influence what the property can be used for and, consequently, the value of the land. There are complex legislative and regulatory requirements as well as the requirements of local water authorities connected with the transacting of water rights. In addition, it is appropriate that this issue be nationally regulated because of the fact that the asset travels across State borders. Accordingly, the REINSW is of the view that agency work in connection with the transacting of water rights should also be regulated.

Draft legislation package

The REINSW was astounded when the consultation legislative package was released by COAG within half an hour of the conclusion of the consultation and information session on the RIS held in Sydney. Clearly the feedback in relation to the RIS could not have been taken into consideration when drafting the legislative package.

As noted above, there are fundamental flaws with the proposals for a national system as set out in the RIS. Until these flaws are resolved and the essential features of a national approach are agreed there is no utility in debating the details of the legislative framework.

Conclusion

Inadequate national licensing standards will harm consumer confidence and damage the profession. The draft national licensing rules proposed in the RIS will result in a dilution of the aggregate skills, knowledge and experience of the profession and, as a consequence, the profession will find it increasingly difficult to respond to consumer expectations and the complex legislative environment in which property is transacted. Unless national licensing is preceded by the harmonisation of the regulatory environment, there will be confusion and risk to both agents and consumers.

The REINSW appreciates the opportunity to comment on the national licensing reform and would welcome the opportunity to discuss it further.

10 October 2012



Tim McKibbin
Chief Executive Officer
Real Estate Institute of New South Wales



Eva Sklavos
Legal & Policy Manager
Real Estate Institute of New South Wales