



**Submission of
Real Estate Institute of New Zealand Inc**

On

**Mutual Recognition Schemes
February 2015**

To the Australian Productivity Commission

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MELBOURNE

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Introduction

The Real Estate Institute of New Zealand Inc (REINZ) welcomes the opportunity to present this submission to the Australian Productivity Commission (the Commission) on its review of the mutual recognition scheme between Australia and New Zealand.

REINZ is a membership organisation representing an industry of real estate professionals for over one hundred years. REINZ has over 13,000 members specialising in all facets of the real estate arena.

The objectives and purpose of REINZ are to:

- (a) Promote and facilitate the quality, expertise and integrity of REINZ members in relation to the principles and practice of real estate;
- (b) Support, protect, represent, and promote the general interests of REINZ members in their real estate activities;
- (c) Consider, and represent REINZ members on all matters affecting the interests of REINZ members particularly the effects of legislation, regulations, rules of government, government agencies including crown entities, and local authorities;
- (d) Enhance the public awareness and reputation of REINZ members;
- (e) Undertake such commercial activities of benefit, interest and advantage for REINZ and its members; and
- (f) Manage and invest all the monies, property and assets of REINZ in a manner that is of benefit, interest and advantage for REINZ and its members.

There are ten different categories of membership to REINZ including Property Management Agency member, Salesperson member and Associate member and the membership is further divided into different groups according to their practice area and location. Three different sector groups of Residential Property Management, Business Brokers and Auctioneers are each represented by their Sector Group leaders and members are also represented by their District Forum Members and Regional Directors within their region.

General Comment

The Commission's Issue Paper deals with the review of the Mutual Recognition Agreement (the MRA) and the Trans-Tasman Mutual Recognition Arrangement (the TTMRA).

Under the MRA, Australian states or territories mutually recognise compliance with each other's laws for the sale of goods and the registration of occupations. Under the TTMRA such recognition is between Australia and New Zealand. The Commission concluded during its 2009 review that the TTMRA served as one of the most important tools in satisfying the Closer Economic Relations agenda between Australia and New Zealand.¹

In this submission, REINZ will only focus on the review of the TTMRA in relation to the occupational recognition of real estate agents between Australia and New Zealand. The intent of the scheme is beneficial to both countries and it has secured many advantages.

The TTMRA applies to occupations for which some form of legislation-based registration, certification, licensing, approval, admission or other form of authorisation is required. There is growing recognition between the New Zealand and Australian governments about the importance of the Trans-Tasman relationship. It has helped the workforce move freely between New Zealand and Australia and has removed many of the costs involved. This is because people don't have to prove they are qualified to practise an occupation through re-testing and re-licensing.

Mutual recognition of real estate occupations

Currently under the TTMRA, people registered to practice an occupation in one jurisdiction are entitled to practise an equivalent occupation in other jurisdictions, after notifying the local occupation-registration body. A person who is qualified and licensed in Australia to sell real estate therefore must still apply to the New Zealand Real Estate Agents Authority (the REAA) to be licensed as an agent, branch manager or salesperson in New Zealand. The application fee is currently \$1,132.75 (AUD 1,088.08). The application requires a supporting declaration by the applicant to confirm that there is no pending charges or actions that might lead to disciplinary proceedings and the current license issued by the home jurisdiction is not subject to any special conditions or prohibitions. Authorisation to the New Zealand Police to disclose information also forms part of the supporting documents.

Special conditions apply to applicants with New South Wales registration. They are not able to prepare any agreement for the sale and purchase of land or business or give advice about legal

¹ *Review of Mutual Recognition Schemes, Productivity Commission Research Report January 2009, p 271.*

rights and obligations incidental to the preparing such agreement until they have 6 months experience as a licensee in New Zealand and have provided the REAA with certification that they have completed an additional education requirement (Unit Standard 23137). This condition has been imposed by the REAA as a result of recognition that real estate agents in New South Wales are not authorised to prepare such documents.

Australian applicants who become licensees in New Zealand under the TTMRA are also required to complete the continuing education requirements in New Zealand under the Real Estate Agents Act (Continuing Education) Practice Rules 2011 which came into force on 1 January 2012.

In New South Wales, a New Zealand real estate agent's license is equivalent to a New South Wales Real Estate Agent's, Business Agent's and conditional Stock and Station Agent's licence. Similarly, a New Zealand salesperson is equivalent to a New South Wales Real Estate Salesperson, Business Salesperson and conditional Stock and Station Salesperson. Once the license is issued, New Zealand applicants must adhere to the requirement to have professional indemnity insurance under the Property, Stock and Business Agents Act 2002.

Mutual Recognition only applies to individuals with an equivalent occupation. For example, as Tasmania and Victoria do not have formal registration of Real Estate Salespersons,² applicants from these states as salespersons are ineligible to apply for mutual recognition.

Benefits and Detriments

In REINZ's view, the national licensing system in New Zealand is relatively easier to be utilised by applicants from Australian states and territories under the TTMRA.

Whilst states such as Victoria and Queensland provide detailed information about the requirements under TTMRA for New Zealand applicants, there is not as much information in Australian Capital Territory, for example or are not readily available. The application fees also vary greatly amongst the states, ranging from approximately \$400-\$1,300 (AUD).

At the core of the TTMRA is the equivalence of occupation - two occupations being labelled as similar or same. Currently, the MRA provides for the system of Ministerial Declarations. The Ministerial Declaration system operates with two jurisdictions announcing that a particular occupation is to be treated as an equivalent in both states. In its 2009 review, the Commission

² http://www.fairtrading.qld.gov.au/__data/assets/pdf_file/0005/298706/0475FT_MutRec_F1_V1_1014.pdf, p 5.

expressed an intention to include New Zealand in Ministerial Declarations. The Commission has raised this question again.

The license recognition website³ designed to assist regulators in making decisions on license applications under the MRA is a useful tool to identify the equivalent occupation that can benefit from the MRA. REINZ submits that this tool be extended to include New Zealand. REINZ would be more than happy to assist with this work in relation to the category of 'Property Agents'.

Having said that, the question of whether there should be Ministerial Declarations of occupational equivalence between Australia and New Zealand is best to be re-visited once the national licensing is accomplished in Australia. REINZ agrees with the Commission's concern raised in its 2009 report regarding unilateral modification of license categories or customisation of equivalence conditions by individual jurisdictions which will defeat the purpose of Ministerial Declarations.⁴

According to the statistics provided to REINZ by the REAA,⁵ between 2013 and 2014, 31 applications have been successfully lodged by Australian applicants for agent's license and 38 for individual salesperson's license. This number represents approximately 2% of the total number of licenses granted by the REAA during that period. It is interesting to note that the majority of those applications were made from Queensland whilst no applications were made from Tasmania and Northern Territory. This leads to the question of jurisdictional 'shopping and hopping' discussed in the Commission's Issue Paper.

Jurisdictional 'shopping and hopping' is a situation whereby a practitioner qualifies in one jurisdiction, with no intention of practicing in that jurisdiction, but only because it was simpler to do so. This trend was identified as a cause of concern for the Commission in its 2003 and 2009 review papers.

REINZ members have expressed concerns about products such as the 'Property Services Training Package' in Queensland which can be completed with relative ease in a short length of time. In contrast, in New Zealand from the 1st January 2018, the REAA will adopt a higher level of qualification required from those who provide training to all licensees. All those teaching the verifiable (mandatory) continuing education material will need to have an Adult Education Qualification and an Agent Qualification. Since it is not mandatory for an applicant under the TTMRA to reside in Queensland, products such as the 'Property Services Training Package' offered in

³ www.licencerecognition.govt.au

⁴ For example, see the current NZ qualifications review:
<http://www.reaa.govt.nz/News/NewsletterLinkedPages/Pages/October%202014%20Newsletter/Qualifications-review.aspx>

⁵ Please see attachment to this submission.

Queensland is being utilised by New Zealand residents in order to use the Queensland license to apply with the REAA under the TTMRA, with the intention to practice only in New Zealand. These activities are presently difficult to identify and monitor. REINZ submits that the TTMRA be reviewed to adopt better monitoring mechanisms to minimise the incidents of abuse of the scheme. REINZ submits that, if left unchecked, the trend of exploiting jurisdictional differences has the potential to undermine the intention of the mutual recognition scheme. Proactive measures should be put into place to address the trend.

Jurisdictional Difference

Recognition under the TTMRA focuses on whether or not a person is registered in their home jurisdiction – not on the requirements for registration (e.g. possession of a qualification). This means that the pre-requisite criteria for initial registration in the recipient jurisdiction cannot be imposed on persons seeking registration under the scheme. For example, it is not the intention of the scheme to require a person to upgrade their qualifications to bring them into line with local registration requirements, unless they are required to do so to achieve equivalency of occupations.

The concern in regards to the jurisdictional difference remains largely with the lack of equivalence in the educational requirements. In New Zealand, an agent's licence or branch manager's licence requires 3 years' experience in real estate agency work. Whilst there is similar requirement in Northern Territory, Western Australia and Victoria, there appears to be none in other states.

The Commission's Issue Paper discusses that its 2009 review found evidence that regulators were imposing conditions on registration that were contrary to the intent of mutual recognition legislation in order to offset differences in standards, rather than just limit the scope of permitted activities. Whilst REINZ agrees with that concern we recognise the need for the REAA to impose the current condition/restriction on New South Wales applicants under the TTMRA.

As stated earlier in this submission, the REAA requires all New South Wales licensees to complete an additional course before gaining their New Zealand licence in a form of a "top up" so that they are able to perform the same tasks in New Zealand.⁶ This is because the New South Wales real estate agents do not prepare sale contracts whilst it forms part of the key tasks of a real estate licensee in New Zealand.

REINZ is in support of the Commission's previous recommendation that mutual recognition legislation be amended to make clear the types of conditions that registration authorities may

⁶ <http://www.reaa.govt.nz/ForLicensees/ApplyingForYourLicence/Australians-applying-for-a-New-Zealand-licence/Pages/Australians-applying-for-a-New-Zealand-licence.aspx>

impose at the time of registration. We submit that the reliance on the Trans-Tasman Occupations Tribunal to address this issue as suggested by the Cross-Jurisdictional Review Form is superficial when the Tribunal is significantly underused and the filing fee is excessive.

On-going requirements of a host jurisdiction

The TTMRA does not affect the operation of laws that regulate the manner of carrying on an occupation. These laws include requirements relating to, for example, trust accounts, fees and continuing education. Applicants must therefore meet the laws that govern the manner of carrying on an occupation.

The Commission's Issue Paper notes that during its 2009 review, the Commission presented legal advice which suggested that an Australian registration authority cannot impose on-going requirements – such as for training or criminal record checks – on people who registered under the mutual recognition, but that a New Zealand authority is not similarly constrained.

REINZ submits against adopting the approach used by the European Union where the applicant is only required to be registered in their home jurisdiction. Adoption of such an approach is likely to distort the licensing data in the host jurisdiction, making it difficult to monitor those who were granted the license under the TTMRA. REINZ submits instead that people licensed or registered under the TTMRA should be subject to the same on-going requirements as other license holders in that jurisdiction to ensure that consistent standard applies to all licensees practising in the host jurisdiction. In the view of REINZ, this is particularly important in respect of the current obligation on New Zealand licensees to hold monies in trust accounts that are regularly audited, and the obligation to comply with the new continuing education requirements. REINZ believes that it is imperative to impose these continuing obligations especially given that the law applicable to real estate licensees is fast developing in New Zealand since the enactment of the Real Estate Agents Act 2008.

Automatic mutual recognition

The Commission has asked whether there is a strong case for adopting automatic mutual recognition. This would be a process that takes the TTMRA scheme one step further, because applicants would not need to apply to a host jurisdiction if they wish to practice there. Instead, they would automatically be eligible upon registration in their home jurisdiction. The scheme currently applies to a small number of trade occupations, for example electrical licences issued in New Zealand may work in Queensland without having to apply for a licence

REINZ submits that adopting automatic recognition scheme to the real estate industry between Australia and New Zealand is premature and will first require a national licensing system in Australia. Presently, it would not provide any significant benefit to the profession, particularly given the concerns expressed above in relation to jurisdictional differences. To that end, REINZ submits that a national licencing system in Australia would support the operation of the scheme and enhance efficiency between the two countries.

Mutual Recognition of Business registration

Under the TTMRA, mutual recognition is only available for individuals, not companies, and likewise there is no mutual recognition for a corporate real estate license.

The Commission's Issue Paper notes that a national business registration scheme was introduced in Australia in 2012 which means that businesses now only need to register once in order to operate across jurisdictions within Australia. The Commission discusses the possibility of extending the scheme to include the registration of businesses. Under this proposal, businesses applying for incorporation in their home country will be able to simultaneously elect to be registered as a foreign company in the other country.

Whilst business names are maintained by the Australian Securities & Investments Commission (the ASIC), the New Zealand equivalent maintains a company register. In simple terms, the ASIC and New Zealand Companies Office maintain different registers. A company is merely an entity that is entitled to register a business name. Whilst it is compulsory in Australia to register a business name, it is not compulsory to do so in New Zealand.

Pursuant to the Companies Act, the registrar of the Companies Office is not allowed to register a name which is identical or almost identical to any other company name (or to a company name which has already been reserved). It would be imperative to ensure that the ASIC and the New Zealand Companies Office are fully consulted on this proposal.

In New Zealand, a company can only possess a real estate agent's license if at least one officer of the company personally holds an agent's license.⁷ Accordingly, extending the TTMRA to companies may result in New Zealand having an inconsistent system of allowing Australian companies to attain an agent's license under the TTMRA whilst New Zealand applicants will have to continue to support such applications with a director's personal license.

⁷ *Real Estate Agents Act 2008, s 44(2)*.

Table 1: Licence applications approved under TTMRA. 2013 and 2014

	Individual: Agent	Individual: Salesperson	Total
ACT	1		1
2014	1		1
NSW	6	6	12
2013	3	4	7
2014	3	2	5
QLD	16	24	40
2013	10	10	20
2014	6	14	20
SA	2	2	4
2013	1	2	3
2014	1		1
VIC	5	4	9
2013		2	2
2014	5	2	7
WA	1	2	3
2014	1	2	3
Total	31	38	69

Table 2: New Zealand Licence applications approved 2013 and 2014

	Individual: Agent	Individual: Branch Manager	Individual: Salesperson	Total
2013	21	11	1647	1679
2014	33	9	1760	1802
Total	54	20	3407	3481

The number of people who gained a licence under TTMRA is very low, less than 2% of the total number of individual licences granted. The largest % come from Queensland.