

REIV's response to Automatic Mutual Recognition of Occupational Registrations

Exposure Draft Legislation

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INTRODUCTION

The Real Estate Institute of Victoria (REIV) is the peak professional association for the real estate industry in Victoria.

Our members specialise in all facets of real estate, including residential and commercial and industrial leasing and sales, auctions, business broking, buyers' agency, property management, owners' corporations and valuations.

REIV represents more than 80 per cent of these professions.

These businesses employ more than 15,000 people in Victoria in a market that handles around \$76 billion in transactions totalling 20 per cent of GSP.

Overview

The Real Estate Institute of Victoria (REIV) is grateful for the opportunity to provide input into this issue and respectfully requests that Victoria's participation in Automatic Mutual Recognition for Property Occupation Licensing be deferred.

The REIV is the state body and voice for the real estate profession in Victoria. Real estate in Victoria is regulated by Consumer Affairs Victoria (CAV) and licensing is managed through the Business Licensing Authority (BLA). Not every real estate agent in Victoria is an REIV Member. Having said that, the vast majority of agencies or real estate businesses are Members, as are the vast majority of licensed agents. However, only about 10-15% of agent's representatives are Members of the REIV.

The REIV is a Registered Training Organisation offering both Licence and Agent's Representative qualification courses. The REIV also operates a Continuing Professional Development (CPD) programme; completion of which is mandatory to retain REIV membership. Embedded in that CPD programme is an ethics module which must be completed annually with a 100% accuracy rate.

The REIV also operates an accreditation scheme, regular information sessions and pursuit of excellence programmes such as awards and auctioneering competitions. The REIV also provides information services to its Members and offers statutory and non-statutory documents/forms to its membership to support their business operations.

The national perspective

Our national body, the Real Estate Institute of Australia (REIA), was established in 1924. During our history as a national industry we have always taken the collective standards to become an agent very seriously.

REIA has since 1962 administered an exclusive Associate (AREI) and Fellowship (FREI) program which has been awarded to just 4,760 of Australian agents. REIA also runs an annual National Awards for Excellence; and administers a National Code of Conduct which has been in place since 2012. We support a set of common national standards for the Australian real estate profession across training, qualifications and consumer protection. This was the case in 2012 – 2013 underneath the then National Occupation Licensing Authority (NOLA) and in 2015 when contributing to a Productivity Commission study on Mutual Recognition.

As it stands in 2020, there is not a single national standard in training, qualification, continued professional development or an agreed or common single set of property occupation registrations or licenses.

In Victoria there was substantial initial resistance by the Victorian regulator to adopt the National Training Package recommended through the work of the Federal Government's engaged consultants, Artibus. In effect, REIV was required to take strong steps to ensure that our qualification standards did not fall behind the rest of the nation. Unfortunately, even the adoption of the National Training Package by all jurisdictions and REI's across the nation has not resulted in universally common qualification standards.

The Victorian perspective

The regulatory reform agenda of the Victorian Government for the property sector has been substantial over the past four years. In some regards the COVID-19 crisis stayed some of the legislative amendments, however as the crisis eases we are seeing a ramping up of the reform agenda. A major impact for the real estate profession on 29 March will be the commencement of new legislation and regulations for residential tenancies. In our view the timing of this is ill-advised and notwithstanding our repeated protests regarding this fact, and the fact that only 60 days has been allowed to prepare the entire property management profession and supply side for substantial change, the changes are coming unimpeded.

The REIV has long argued that Consumer Affairs Victoria is not the appropriate body to regulate the real estate profession. This is not a commentary on their performance or competence. However simply by dint of its title, CAV is slanted in its operation toward consumers and in our experience often overlooks the business imperatives in the pursuit of consumerism. That is not to say that there is not a need for strong consumer protection in the real estate sector, however high levels of consumer protection would still exist for CAV under the provisions of Australian Consumer Law, a framework that is more often than relied upon by CAV for its regulatory function rather than state law, particularly pertaining to property sales whether or not they were the designated regulator for real estate. There is also not a universally common approach nationally to how and what instrumentality governs the real estate profession in each state or territory.

The adjudication of disputes in real estate is also different from state to state to territory. Despite there being a dedicated 'List' at the Victorian Civil and Administrative Tribunal (VCAT) for holding inquiries into the conduct of wayward real estate agents, the REIV is unable to identify any cases brought to this jurisdiction over the past few years. The move to pecuniary penalty provisions, enforceable undertakings, infringement notices and other compliance activities are heavily weighted against fair and due process. In effect, the profession is regulated by its own prosecutor and adjudicator and again this demonstrates the variance from state to state to territory.

Real estate in Victoria is impacted on by a broad range of Acts and regulations. These include but are not limited to the Estate Agents Act, Sale of Land Act, Retail Leases Act, Residential Tenancies Act, Owners Corporations Act, VCAT Act, Australian Consumer Law and Fair Trading Act, Building Act, Rooming House Operators Act, Valuation of Land Act and various Land Acts. Generally speaking many of these are administered by Consumer Affairs Victoria under the Ministry of Consumer Affairs.

In the broader context, the Department of Justice and Community Safety administers a large portion of the legislation with the Attorney General holding sway over the operations of VCAT. The mish-mash of regulatory control in the real estate sector was brought into the spotlight during the Covid-19 crisis with lack of communication, slowness to update websites critical for information dissemination and the off-loading of responsibilities and accountabilities to different agencies commonplace.

The most glaring failure of the approach to real estate over the past twelve months has been the total distancing of the real estate regulator (CAV) for commercial, industrial and retail oriented real estate agents in relation to the commercial and retail lease moratorium. These agents were forced to deal solely with the Office of the Small Business Commissioner office on the moratorium issues. The information transfer from CAV to the office of the Commissioner and vice-versa was virtually non-existent. On a number of occasions during 2020 I raised with the Director of Consumer Affairs Victoria the evident avoidance by CAV to interact with the commercial/retail cohort.

To emphasise this point – all agents regardless of their practice area are regulated by CAV and licensed by the BLA, however because it is somehow perceived that commercial/retail agents do not deal with ‘consumers’ in CAV’s vernacular, they are partitioned.

Conclusion and recommendation

The proposal for an automatic mutual recognition framework would lead to agents practising in Victoria who simply have never operated under the same rules, governance, legal requirements or scrutiny as existing licensed agents in this state. I am certain the same would apply to many other jurisdictions and that this would be a common thread in responses from other Real Estate Institutes. The current frameworks under the Mutual Recognition Act and Trans-Tasman Mutual Recognition Act simply do not allow for ease of transferability of skills. The imposition of this legislation ironically causes an increase in regulatory burden and ‘red tape’ on government in the assessment of suitability for recognition.

What needs to occur before any discussion about transitioning to any mutual recognition approach, is for work to be undertaken that brings the various jurisdictions into closer alignment or harmonisation in terms of practice, legislation, regulation, governance, adjudication and approaches to compliance, enforcement and penalty provisions.

REIV has a long standing commitment to supporting a common set of standards for real estate agent professionals, we write to respectfully request the following:

- That Victoria is not included in any Automatic Mutual Recognition Framework.
- That instead of this, a national industry-government ‘case for change’ be identified that outlines the benefits an AMR framework for real estate customers (i.e. the net public good), agencies and governments.
- This business case should harmonise any aspects of training and qualifications as well as regulator credentials. This includes but is not limited to:
 - trust accounting
 - mandatory disclosure requirements
 - management and supervision
 - information requirements
 - conduct of and rules for auctions – including the registration of bidders
 - rights to commissions and the unfair loss of entitlement for commission in certain circumstances
 - agency agreements
 - standards of behaviour and codes of conduct
 - the rental market - residential and commercial/retail/industrial
 - recognising landlords (or residential rental providers as they will shortly be called) as consumers
 - recognising commercial, industrial and retail estate agents as estate agents on a par with the residential sector
 - underquoting legislation for sales agents
 - the role of owners corporations in property management and the regulatory environment
 - the role of valuers in property transactions
 - the role of conveyancers and their shortcomings in the provision of mandatory disclosure

The REIV strongly urges that the real estate profession be excluded from any automatic mutual recognition proposal until greater uniformity is achieved. Uniformity is not achieved by forcing the transferability of skills between jurisdictions.

The timeframes set for any proposed changes are not realistic in terms of achieving a workable outcome. Haste and agility are not the key drivers for this change and any consideration that there is an imminent need for these changes does not recognise the harm that would be caused in the short to medium term (at least) through rampant uncertainty and inconsistency of skills and knowledge.

Furthermore, the notion that economic recovery or even economic stimulus is in anyway dependent upon the transportability of skills of real estate agents between jurisdictions is fundamentally flawed. The real estate sector is extremely competitive and there are sufficient numbers of skilled and accustomed real estate agents in Victoria to meet the needs of consumers. The risk is that unskilled and unaccustomed agents operating in an unfamiliar environment will actually cause economic detriment.

Please do not hesitate to contact the author should any further information or clarification be required.