



REIA

REAL ESTATE INSTITUTE
OF AUSTRALIA

REIA SUBMISSION TO THE ATTORNEY-GENERAL'S DEPARTMENT CONSULTATION PAPER "REAL ESTATE PROFESSIONALS: A MODEL FOR REGULATION UNDER AUSTRALIA'S ANTI-MONEY LAUNDERING AND COUNTER-TERRORISM FINANCING REGIME"

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PREPARED BY

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REIA SUBMISSION TO THE ATTORNEY-GENERAL'S DEPARTMENT CONSULTATION PAPER "REAL ESTATE PROFESSIONALS: A MODEL FOR REGULATION UNDER AUSTRALIA'S ANTI-MONEY LAUNDERING AND COUNTER-TERRORISM FINANCING REGIME"

The Real Estate Institute of Australia (REIA) is the peak national association for the real estate profession in Australia.

The REIA's members are the State and Territory Real Estate Institutes, through which around 75 per cent of real estate agencies are collectively represented. The 2011 Census records the Rental, Hiring and Real Estate Services Industry employment sitting at a total of 117,880. By occupation the key data recorded by ABS Census were 64,699 business brokers, property managers, principals, real estate agents and representatives.

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.

Importantly, REIA represents an integral element of the small business sector. Some 99 per cent of real estate agencies are small businesses and 11 per cent of all small businesses in Australia are involved in real estate.

REIA is committed to providing and assisting research and well-informed advice to the Federal Government, Opposition, professional members of the real estate sector, media and the public on a range of issues affecting the property market.

The REIA welcomes the opportunity to provide a submission to the Attorney-General's Department Consultation Paper "Real Estate Professionals: A Model for Regulation under Australia's Anti-Money Laundering and Counter-Terrorism Financing Regime".

Introduction

The Consultation Paper seeks responses to a number of questions about a model for regulating Australian real estate professionals as the Government implements recommendations from the *Report of the Statutory Review of the Anti-Money Laundering and Counter Terrorism Financing Act 2006 and the Associated Rules and Regulations*. Terms of Reference of this Inquiry focus on senior management arrangements and internal systems, board composition, requirements of the Defence Housing Australia Act 1987 and land sales.

The REIA's Submission responds to a number of the questions as well as providing details on the information currently collected by agents and how this could be incorporated in a holistic approach for real estate transactions covering financing, conveyancing and selling. The Submission notes that 99 per cent of real estate

agencies are small businesses and the need to be aware of, if not avoiding, minimising regulatory cost imposts.

Information Currently Collected by Agents

Whilst the approach is not uniform, data on prospective buyers/bidders and renters is currently collected in many jurisdictions. The Table below indicates the requirements by jurisdiction

STATE	BIDDING AT AUCTION	SALES CONTRACT	RESIDENTIAL LEASE	COMMERCIAL LEASE
VICTORIA	Not required	Identity checked	Identity checked	Identity checked
NEW SOUTH WALES	Identity checked			
ACT	Identity checked	Identity checked	Identity checked	
TASMANIA				
SOUTH AUSTRALIA	Identity checked			
WESTERN AUSTRALIA				
QUEENSLAND	Identity checked		Identity checked	
NT				

Bidders are only required to register to bid at auctions in SA, NSW, Qld and ACT. Bidders may provide an Australian Driver's Licence or an Australian Passport. Or, they can provide a combination of identifiers that together provide both name and address, at least one of which must be issued by a government authority or financial institution. E.g. credit card and utilities bill: Medicare card and residential tenancy agreement. In SA, NSW and ACT the acceptable forms of ID are clearly defined, and are often listed on the bidders registration form. In Queensland, the requirements are perhaps less stringent. The REIQ fact sheet regarding bidding at auctions states 'You will need to provide the auctioneer with your name and address and some photo identification— e.g. drivers licence or passport. An agent may also request further proof of your current address'.

Feedback from agents suggests that the introduction of identity checks did not provide any major long term problems for the auctioneers. For agents it provides another way of qualifying the buyers and assessing more accurately the interest they have when going into an auction. The major challenge was ensuring that the agents and auctioneers had a clear understanding of what was required and ensuring that the forms they used were compliant. In this regard, where REIs provided approved

forms to their members this was of assistance. Non member agencies at times sought legal advice at some cost to them.

From the experience of real estate professionals in jurisdictions that have introduced identity checks it would appear that after some initial adjustment, a national approach to identity checks prior to undertaking a transaction are feasible. A national approach will have the added benefit that it is a step towards harmonising real estate practice across the jurisdictions with benefits for training and mutual recognition.

REIA recommends that the current practices of client identification across jurisdictions are examined in formulating a national approach.

Agents are Part of a Chain

Individual agents are not the only entity involved in a real estate transaction. Sales involve not only the agent but also financial institutions and conveyancers as well as the Office of State Revenue and possibly the ATO and FIRB.

It is worth noting that the Financial Action Task Force (FATF), the inter-governmental policy making body, requires that real estate transactions for the purposes of an anti-money laundering scheme are covered by lawyers and conveyancers.

In the UK the property professional is to check the identity of the seller but not the buyer of the real estate. Whilst this is inconsistent with the practice in other countries it is acknowledged that property transactions involve lawyers and conveyancers who also have customer due diligence obligations.

In moving towards a regulatory regime for anti-money laundering in the real estate sector consideration should be given to what information is currently obtained by others and to identify what information gaps there are and whether agents are the best ones to meet the gap and at what cost.

The current FIRB arrangements for withholding tax for properties valued in excess of \$2m provide an example of how a collaborative approach may work.

REIA had extensive liaison with the Australian Taxation Office (ATO) in the development of the approach to implementing the 2013/2014 Budget announcement providing for the introduction of a withholding tax of 10 per cent on the disposal, by foreign residents, of certain 'taxable Australian property' including residential property transactions valued over \$2.0 million.

REIA has been supportive of the proposal and in particular the proposal for the obligation to withhold part of the proceeds of the transaction being on the payer, or buyer, in eligible transactions. This means that, in the case of property transactions, the onus is brought into place during the conveyancing process to establish whether the seller is a foreign resident and thus whether a withholding obligation is triggered. At this stage of the transaction with most property conveyances being undertaken by

either lawyers or conveyancers the necessary investigation is being undertaken by persons practised in the process of undertaking searches. As such, greater compliance is likely.

A similar approach for anti-money laundering in establishing, albeit in this case, a buyers identity would be of great assistance.

The recent introduction of electronic conveyancing would provide an important adjunct. With econveyancing parties to the transaction will need to have their identity verified by the lawyer/conveyancer settling the property. If this data were to be matched with other Government data bases this would provide scope for a level of monitoring and compliance that has not previously been available

It is also worth noting that the Standing Committee on Economics Report on Foreign Investment in Residential Real Estate handed down on 27 November 2014 made a number of recommendations that if implemented would be of great assistance in a anti-money laundering regime in property. The Committee recommended: that the Government, in conjunction with the States and Territories, establish a national register of land title transfers that records the citizenship and residency status of all purchasers of Australian real estate; this information should be accessible by relevant agencies from a single data base, and; and greater use is made of the databases held by AUSTRAC, and also of other relevant Federal and State Government databases.

REIA recommends that for the purposes of an anti-money laundering regime a review be undertaken of all possible data sources, including from conveyancing, FIRB, ATO, SROs and Department of Immigration, which may assist.

Real Estate Agencies are Small Businesses

Almost all real estate agencies are small businesses and as such do not have the structure or the capacity to take on onerous regulatory oversight functions.

The costs associated with replicating the responsibilities and reporting that first tranche companies are undertaking would be prohibitive for the real estate sector and would most likely see the cost imposts leading to closures.

REIA recommends that any proposed anti-money laundering regime covering real estate takes into consideration the small business nature of the sector.

The REIA notes that it is intended to undertake a cost-benefit analysis of the regulatory options. The analysis should consider the incidence of the costs and the benefits. Whilst the benefits are most likely to be community benefits the costs are most likely to be skewed towards real estate agents. This would be inequitable and may well provide an argument for assistance.

Real estate agencies are experiencing unprecedented competition from one-line selling platforms which are undercutting the charges of using a traditional real estate agent. In the UK where some of the models originated we have seen the country's biggest real estate group announce that it is closing 59 branches over the coming months because of competition from these alternatives.

These on-line platforms for sales and auctions, by their very nature, will pose a greater risk for any anti-money laundering scheme regime than traditional real estate businesses and would need to be included in any future scheme.

In addition there are a number of overseas portals selling Australian real estate including new off-the-plan developments to foreign residents. These too would need to be part of any proposed anti-money laundering scheme.

REIA recommends that on-line platforms for selling and auctioning real estate also be covered by any proposed anti-money laundering scheme.

Consultation Paper Question 8: What real estate services should be regulated?

International precedent would suggest the sale of property would be all that should be regulated under an anti-money laundering scheme in Australia.

Whilst REIA does not have any evidence to suggest that sales of property has a higher incidence of questionable transactions the smaller sums of money involved and the potential gains would suggest that on a cost-benefit basis other areas of real estate transactions should remain unregulated.

Consultation Paper Question 11: Should both parties to a transaction be identified?

Again international precedent would suggest that it is only the buyer that should be covered by any proposed anti-money laundering scheme.

Consultation Paper Question 12: Should large cash payments for leases be regulated?

In the ACT the trust accounts of agents are audited by a Government agency. Any large cash payment would be identified through this process. Consideration should be given to taking a national approach to the ACT's example rather than requiring agents to report such transactions and imposing additional unnecessary costs on small business.