

6 February 2017



Financial Crime Section
Transactional Crime Branch
Criminal Justice Policy and Programmes Division
Attorney General's Department
3-5 National Circuit
Barton ACT 2600

By email: antimoneylaundering@ag.gov.au

Dear Sir/Madam

The Real Estate Institute of Queensland (REIQ) is writing in response to the *Real Estate Professionals: a model for regulation under Australia's anti-money laundering and counter terrorism financing regime* consultant paper (Paper).

The REIQ has been the peak professional body for the Queensland real estate industry for more than 99 years. Since its beginnings in 1918, our membership comprises of approximately 1600 agency offices and an estimated 4,000 individual real estate practitioners across Queensland.

Today, the REIQ is recognised as the State's leading authority on real estate and property related issues. The REIQ also holds an excellent reputation as the provider of high quality accredited training courses and professional development training programs. Additionally, we are regarded as a reliable source of up to date market data.

Executive Summary

Whilst the REIQ opposes financial criminality and acknowledges the Government's efforts to combat money laundering and the financing of terrorism, the REIQ is opposed to the proposed extension of the AML/CTF regime to the real estate industry. The reasons for such opposition are set out in the remainder of this submission.

Regulation of the real estate industry

The real estate agent's role is to market and facilitate the sale and purchase of a property. Real estate agents are already subject to an extensive existing regulatory system in respect of licensing and compliance with various professional obligations. These are set out in the *Property Occupations Act 2014 (Act)* and the *Property Occupations Regulation 2014 (Regulation)*.

A real estate agent:

1. Is required to obtain a relevant licence or registration under the Act;
2. Is required to disclose any beneficial interest as defined in the Act;
3. Must not engage in misleading or unconscionable conduct or make false representations under the Act;
4. Is liable to criminal prosecution as well as regulatory sanctions for breaches of the Act;
5. Must comply with various conduct standards as set out in Part 5 of the Regulations.

These include:

- ensuring there is no conflict of interest;
- verifying property ownership and property description;
- investigating the material facts to the sale of a property; and
- acting in accordance with the client's instructions.

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In addition to the legislative requirements, all REIQ members are required to comply with the Standards of Business Practice (**Standards**). These Standards impose a number of additional obligations on a real estate agent including:

1. to act in the best interests of the client; and
2. not using or disclosing confidential or sensitive information while acting on behalf of a client or dealing with a consumer.

The obligations under the AML/CTF regime that arise particularly in relation to suspicious matter reporting and “dobbing” in of offences are incompatible with an REIQ member’s duty to maintain confidentiality under the Standards and also interferes with a real estate agent’s relationship of trust between themselves and their client. An important exception is of course that real estate agents should report known criminal activity to the appropriate department/agency (i.e. the police).

In essence, real estate agents who are members of the REIQ would become compelled to disclose information that they are bound under the Standards to keep confidential. Whilst the REIQ could amend its Standards to remove the confidentiality obligation, we are of the view that maintaining confidentiality is essential when dealing with property sale and purchase transactions.

Verification of Identity and Customer Due Diligence

As stated above, a real estate agent is under a positive obligation to verify the identity of their client and property ownership in relation to a sale. The REIQ also advises its members that it is best practice to also verify the identity of a buyer to a transaction. The REIQ encourages its members to comply with the Office of Fair Trading “Verification of Identity” guidelines available on its website. Consequently, real estate agents are already required to comply with one of the AML/CTF regime obligations, that being customer identification and verification.

We are also opposed to the requirement for real estate agents to conduct customer due diligence for both parties to a transaction. This would be extremely onerous and impractical. Real estate agents deal with many prospective buyers and tenants on a daily basis and requiring customer due diligence for all potential parties to a transaction is time consuming and impractical. It is already customary for real estate agents to check a buyer’s drivers licence (if a natural person) or some other form of identity if the buyer is a body corporate. Furthermore, the REIQ tenancy application form contains a section relating to identity requirements. It is common practice to conduct a 100 point ID check.

If it was determined that it was necessary for customer due diligence requirements to apply to both parties to a transaction, the REIQ’s position is that it should only be required in the case of the party who is not the client, i.e. :

- the buyer in the case of a seller’s agent
- the seller in the case of a buyer’s agent; and
- the tenant in the case of a proposed lease,

when it is known that they will enter into the relevant contract.

Continuing Professional Development (CPD)

All REIQ members are required to complete any combination of certain eligible CPD courses to the value of 100 points. The REIQ is also lobbying the State to introduce a compulsory CPD regime for all real estate agents regardless of whether or not they are a member of the REIQ.

The REIQ is of the view that making real estate agents less susceptible to inadvertent or unintentional involvement in money laundering or terrorism financing activities is best achieved through the existing regulatory scheme governing real estate agents and by raising awareness and providing guidance. Through education and continuing professional development (rather than the imposition of even further statutory obligations), real estate agents can better strengthen their practices with appropriate AML/CTF risk management strategies designed to mitigate any evolving threat.

The REIQ would be more than happy to develop a course relating to AML/CTF risk management strategies for delivery to its members and to prepare and publish guidelines relating to potential AML/CTF risks in a real estate transaction which are set out on page 7 of the Paper and how to mitigate any such risk. We would welcome the opportunity to discuss this further.

Cost of further regulation

The cost and burden of additional further regulation is unjustifiable. Every aspect of a real estate practice is the subject of regulatory oversight and this in turn ensures that real estate agents comply with their legal obligations.

Increased burden

The imposition of an additional AML/CTF statutory regime on real estate agents will result in increased burden and lost time- which will in turn impact productivity and the real estate agent's ability to focus on marketing and facilitating the sale or purchase of a property which is their main role. Real estate agents do not have the capacity to monitor and control their clients and prospective clients in order to deter wrongdoing. The REIQ believes that the proposed AML/CTF reforms in the Paper which require real estate agents to make a judgment about their clients, for example to determine whether a client is suspicious and if they are, to report them to authorities, compromises a real estate agent's duty to act in accordance with their client's instructions under the Regulation. The REIQ is thus fundamentally opposed to the imposition of reporting obligations on real estate agents.

Conclusion

It is the REIQ's submission that making real estate agents less vulnerable to inadvertent and unintentional participation in money laundering or terrorism financing would be best achieved through:

1. continuing professional development, raising awareness and promoting improvements in real estate practice management that have the effect of minimising risks of money laundering and terrorism financing involvement; and
2. proactive promotion of appropriate risk management tools and responses should be achieved through the dissemination of guidelines, information and continuing professional development products that complement existing conduct rules under the Regulation and real estate agents regulatory obligations.

The REIQ looks forward to the opportunity to be able to discuss this submission with the Attorney-General's Department. If you wish to discuss any aspect of this matter, please do not hesitate to contact Mrs Niti Prakash, General Counsel on 3249 7303 or via email nprakash@reiq.com.au.

Yours sincerely



Antonia Mercorella
Chief Executive Officer