



THE LAW SOCIETY
OF NEW SOUTH WALES

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COAG National Licensing Taskforce
Department of Industry, Innovation, Science, Research and Tertiary Education
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Dear Sir / Madam

Consultation Regulation Impact Statement and Consultative Legislative Package for property occupations (national licensing)

The Law Society of NSW appreciates the opportunity to comment on the proposed reform of national licensing for property occupations.

The Law Society's Property Law Committee (Committee) has considered both the Consultation Regulation Impact Statement (RIS) for property occupations and those parts of the Consultative Legislative Package (CLP) affecting property-related occupations.

The Committee is comprised of experienced and specialist property law practitioners, drawn from the ranks of the Law Society's members, who act for various stakeholders in the conveyancing process.

The Committee is concerned that despite the wide range of issues contained in the RIS (including issues as fundamental as whether the appropriate path to pursue is a national licensing model or a regime based on automatic mutual recognition) the closing date for comments on the RIS coincides with the closing date for comments on the CLP. The Committee seriously questions the utility of the RIS process given that draft legislation is released prior to the conclusion of the time allowed for comment on the RIS.

The Committee also considers that the time allowed between the release of the CLP and the closing date for comments is far too brief given the scope of, and significant consequences to, consumers and other stakeholders of the proposed changes. The Committee urges that the time for consultation on the draft legislation be extended, and that a Bill not be brought before Parliament until effective and more meaningful consultation occurs.

Given the brief time frame for comment, the Committee makes a number of general comments only on matters of principle, rather than detailed commentary on the RIS and CLP.

The Committee considers that given the wide divergences in the scope of work and functions currently undertaken by property occupations across the jurisdictions, an automatic mutual recognition approach is far preferable to a national licensing strategy. To take but one example, the role of an agent in the formation of contracts for sale for residential property is radically different in New South Wales from the position in Victoria, and different again from the scope of work in Queensland. The efficiencies associated with adopting what the RIS described as the “driver’s licence model” of automatic mutual recognition could have come without the dangers inherent in the national licensing model – specifically, the risk of agents undertaking a transaction in a jurisdiction which utilises procedures which are not, from the agent’s perspective, the “usual way of doing things”.

The Committee strongly opposes any regulatory regime which would effectively deregulate selling or leasing in the commercial property sector. Schedule 4 Item 1 of the consultation draft of the *Occupational Licensing National Law Amendment Bill 2012* contains the following definitions (underlining added):

auctioneering work means the auctioning of residential real property, on behalf of another person, for fee, gain or other reward.

real estate agency work means selling, purchasing, exchanging, leasing, managing or otherwise dealing with residential real property, on behalf of another person, for fee, gain or other reward, but does not include strata-managing agency work.

residential real property means real property that is used, or is intended to be used, for residential purposes and does not include real property that is used primarily for the purposes of industry, commerce or primary production.

Proponents of the deregulation of the commercial agency sector have suggested that the only “consumers” of property services in need of protection are those involved in the sale, purchase or leasing of residential property. The rationale appears to be that a party involved in a transaction where the subject matter is non-residential property will be a large, sophisticated entity with the commercial expertise to look after its own interests. The Committee believes that assumption is flawed. A significant proportion of the owners, purchasers and tenants of non-residential property are small-scale investors who may own or lease only one property (for example, operators of a small business, or someone acquiring property with the intent of acquiring an asset for a self-managed superannuation fund).

The Committee also strongly opposes the deregulation of those operating in the stock and station agency sector. The Committee considers that the sale and leasing of rural property and acting as an intermediary in livestock transactions is an area of complexity, and of serious consumer risk if not effected by an appropriately regulated agent. As is the case with commercial property, a significant proportion of owners, buyers, tenants and agistees of rural properties are not large, sophisticated and powerful entities. It is the Committee’s view that matters of competence and financial probity should be regulated where the transaction involves rural property.

The Committee strongly opposes any proposal to remove requirements for continuing professional development for property occupations. It seems to the Committee that one of the hallmarks of a profession is its commitment to continuing development, and it is in the interests not only of clients of property professionals but also of the licensees themselves that there be mandatory continuing professional development.

The Committee also considers that the educational prerequisites to both licensing and registration in NSW are currently inadequate, and any attempt to reduce those requirements would compound what the Committee sees as a weakness in the existing regulatory regime.

The Law Society appreciates the opportunity to comment on the draft reforms. Please do not hesitate to contact Gabrielle Lea, Policy Lawyer, Property Law Committee should you have any questions in respect of this letter, on telephone (02) 9926 0375 or via email: gabrielle.lea@lawsociety.com.au.

Yours faithfully



Justin Dowd
President

