

Submission

by

Business|NZ

on

**the public consultation document,
The Government's Preferred Options for the
Reform of the Real Estate Agents Act 1976**

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Introduction

This submission from Business New Zealand does not seek to answer all the questions posed by the public consultation document but confines itself to certain specific issues about which this organisation has particular concerns.

Part A - New licensing Regime and Related Issues

There is little to be said for the proposal to set up a new licensing regime given that a Real Estate Agent's Licensing Board, comprising both industry and independent outside representatives, is already in existence and has powers both to issue real estate licences and to cancel them. There is equally little purpose in setting up a new bureaucracy to replace an existing system which, if it is not functioning appropriately, should be revitalised rather than replaced – particularly if part of the motivation for doing so is based on hearsay possibly resulting from inadequate reporting. Put another way, if the current people are the problem, it is the people that need attention, not the infrastructure.

It is noted that the current Act provides for the setting up of Regional Disciplinary Committees (if the concern is with the speed with which the Institute currently deals with complaints) but that these have never been put in place. It is Business New Zealand's view that ensuring a more effective use of the current system is preferable to the introduction of something completely new.

The fact that the Regional Committees, like the Board, are also required to comprise both Real Estate Institute and independent non Real Estate Institute members (and must also have a barrister or solicitor as chairperson) means that they are by no means self-regulating in the generally accepted sense of that term. In fact, given that the proposed new structure would likely comprise a similar mix, Business New Zealand cannot envisage how a new system might

provide more integrity and/or efficiency than a properly working version of the current model.

Part B Who Should be Licensed?

In Business New Zealand's opinion the paper takes an unduly pessimistic and possibly dangerous view of the real estate industry when it states that 'real estate agents potentially pose substantial risks to consumers'. That same 'potential' applies to any occupation in the business of taking money off the public. In singling out real estate agents for such comment, the consultation document is verging on describing the real estate profession as dishonest. There is no evidence for such a claim, any more than there is to describe other professions per se as dishonest. Predicating a wholesale change to the management of the real estate industry on what is no more than an opinion of the sector has no place in sound and sensible public policy management. It should be noted (Part C) that a 'good character' test already applies to persons involved in selling real estate and that, as indicated above, a more readily accessible disciplinary process is already provided for and could well be implemented.

With respect to the various other professionals involved in the selling of real estate, it would be reasonable to listen to their views on the extent to which they consider licensing requirements should be further extended (although it is difficult to see how these could be made to apply to people involved in private sales).

Part C. Entry requirements, Employment Status and Licensing Process

Business New Zealand agrees that there is a need for occupational training and understands that there is current concern in the industry that real estate agents and salespeople licensed in Australian states can register as real estate agents and salespeople in New Zealand without meeting this country's industry

requirements (under the Trans-Tasman Mutual Recognition Arrangement). If this is a situation likely to cause future problems it needs to be addressed.

The discussion paper appears to consider that low educational requirements mean that barriers to entry for salespeople are low but this overlooks the fact that what is important is that effective job-directed training should be provided, either before or after a salesperson is taken on. This should be obligatory not only for local agents and salespeople but for anyone whose Australian qualifications can be shown not to measure up to what is required locally. Here a person must pass exams under a syllabus prepared by the Real Estate Institute. If the syllabus is not currently considered to be adequate, there is nothing to stop it being revised in consultation with the industry ITO which, it is understood, is generally funded by the industry. Low existing qualifications should not, however, be used as an excuse to keep people out of the industry – if that is the intention – since it is often impossible to know in advance who will succeed in a particular occupation and who will not. The important thing is to be given the opportunity to try and appropriate training to support that endeavour.

C2 Employment Status

As the discussion paper points out, following the *Challenge Real Estate* case the Real Estate Agents Act was amended to allow agents and salespersons to operate as independent contractors, as most had traditionally done (and still do). This was not just a question of contingent liabilities but a matter of choice for most of the individuals concerned.

The above is the situation that applies today and it should continue to do so. Anyone operating in the industry who opts to act as an independent contractor should not subsequently be able to decide that engagement as an employee would be preferable. Contractual certainty is always desirable since anything less makes it difficult for the ‘employer’ to conduct a satisfactory business.

Employers need to be able to rely on the nature of the contract entered into if all involved are not to be affected by the consequences of any subsequent adverse finding.

Rather than pursuing the public consultation document's proposed approach, it would be better to make provision for persons offered employment in the industry as independent contractors to be allowed a statutory period (of, say, a week) in which to seek advice as to whether such employment is appropriate for them, not allow for a later change of heart some way down the track.

Business New Zealand

Business New Zealand is New Zealand's largest business advocacy body and encompasses four regional business organisations¹ as well as a 67-member Affiliated Industries Group (AIG). The AIG comprises most of the country's national industry associations and consequently enables Business New Zealand to tap into the views of over 76,000 employers and businesses, ranging from the smallest to the largest, reflecting the make-up of the New Zealand economy.

In addition to advocacy on behalf of enterprise, Business New Zealand contributes to Government and tripartite working parties and to international bodies including the ILO, the International Organisation of Employers and the Business and Industry Advisory Council to the OECD.

Business New Zealand's key goal is the implementation of policies that would see New Zealand retain a first world national income and regain a place in the top ten of the OECD, a high comparative OECD growth ranking being the most robust indicator of a country's ability to deliver quality health, education, superannuation and other social services. It is widely acknowledged that

¹(Employers' & Manufacturers' Association (Northern), Employers' & Manufacturers' Association (Central), Canterbury Employers' Chamber of Commerce, and the Otago-Southland Employers' Association).

consistent, sustainable growth well in excess of 4% per capita per year would be required to achieve this goal in the medium term.