



FILE NOTE

ACCC OFFICER:	IMOGEN HARTCHER-O'BRIEN, HANNAH RANSOM	DATE:	12 JANUARY 2012
<input checked="" type="checkbox"/> PHONE TO <input type="checkbox"/> PHONE FROM <input type="checkbox"/> MEETING	FILE NUMBER: C2011/951	TRACKIT:	47495
SUBJECT:	A91280 – REAL ESTATE INSTITUTE OF WESTERN AUSTRALIA		
OTHER PARTIES:	BOB ROSSI, FORMER REGISTRAR OF THE REAL ESTATE AND BUSINESS AGENTS SUPERVISORY BOARD OF WESTERN AUSTRALIA		
PHONE/LOCATION:	By phone		
TIME FROM:	12:50pm	TIME TO:	2:20pm

1. Imogen Hartcher-O'Brien (IHO) and Hannah Ransom (HR) held a teleconference with Bob Rossi (BR), formerly of the Real Estate and Business Agents Supervisory Board of Western Australia (REBA) to discuss the Real Estate Institute of Western Australia (REIWA)'s application for revocation and substitution of authorisation A91280.
2. IHO provided background information on REIWA's latest application for authorisation, including the arrangements for which REIWA sought reauthorisation. IHO confirmed with BR that he had previously been involved in REIWA authorisations. IHO outlined changes in arrangements since previous authorisation, including the proposed Compulsory Professional Development (CPD) scheme.

Compulsory professional development

3. HR outlined that REIWA proposes, if current compulsory professional education requirements for licensing are removed by the regulator, to require its members to complete seven hours of CPD annually as a condition of ongoing membership of REIWA. REIWA proposes that 3.5 hours of this must be provided by REIWA with the remaining 3.5 hours to be conducted by REIWA or other training providers according to guidelines provided by REIWA. REIWA's proposed CPD scheme is only to apply in the event that currently proposed legislative changes come into effect which would remove the requirement for compulsory professional education administered by the relevant Western Australian regulatory body as an ongoing condition of licensing for real estate agents.
4. BR said his understanding was that it was unlikely, based on past opposition in the state and in light of the political climate, that the proposed legislative changes – which would introduce a national licensing scheme for real estate agents – would

be adopted in the Western Australian jurisdiction. BR noted that the implementation of these proposed changes had been pushed back several times.

5. HR noted that the current projected date for implementation of the national licensing system was mid-2013 and therefore within the scope of the period of this authorisation.
6. BR noted that the regulator of the real estate industry in Western Australia – the Department of Commerce – had had the chance to abandon the compulsory professional education requirements for licensing recently, but had instead issued a new call for tenders for the provision of training in December 2011 to cover provision of training in 2012.
7. BR noted that REIWA derives significant income from the training it provides to real estate agents. BR noted that, prior to the introduction of the compulsory professional education requirement for licensing in Western Australia in 2007, REIWA had been the only provider of training services to real estate agents in the state.
8. BR outlined that, upon commencement of the compulsory professional education requirement for licensing, the REBA Board (then the regulatory body) put the development of training materials for the mandatory aspect of the training out to tender. BR noted that West Coast Property Training (WCPT) had won this tender as REBA had assessed WCPT to have prepared the best content. This content was then licensed to three registered training organisations (RTOs), including WCPT and REIWA, by the Board for delivery of the training to real estate agents in WA. BR said that of the RTOs who had presented this material, none had given negative feedback on the material and that it was generally recognised as being high quality.
9. BR said that, absent a training requirement by the regulator, the only requirement for ongoing training for real estate agents in Western Australia would be any requirement imposed by the institute (REIWA).
10. BR stated that, should REIWA's proposed CPD go ahead, REIWA was likely to become the only training provider for real estate agents in Western Australia. BR noted that, if it was compulsory to attend half of the CPD requirements with REIWA directly, the remaining 3.5 hours of elective training would likely also be provided by REIWA as this was the most convenient method of delivery for real estate agents. BR noted that many real estate agents currently get all their compulsory training – both mandatory and elective – from a single provider for convenience reasons. BR said that if real estate agents were required to get 3.5 hours of training from REIWA, they would likely get all their training from REIWA.
11. BR noted that, in contrast with the current arrangements where the Board funds delivery of the mandatory training directly, including cost of the training going to regional and remote locations, under the proposed arrangements the independent RTOs would have no incentive to provide training to real estate agents in regional areas. For these RTOs it would not be viable to fly trainers to regional areas where they were not able to provide all 7 hours of compulsory training, and therefore only REIWA would have capacity to provide services in regional areas. BR noted that REIWA had regional Chapters, but that the geographic regions covered by REIWA's chapters were still large geographically so as to make travelling within

a Chapter to access training potentially expensive and inconvenient for real estate agents in regional and remote locations.

12. HR asked BR his view on whether REIWA was in a special position to deliver mandatory training to real estate agents due to its relationship with the regulator, real estate agents and consumers. BR said that there was a perception among the public in Western Australia that REIWA was the regulatory body for the real estate industry. BR elaborated on this point, indicating that REIWA had managed to create such a strong association with regulation of the real estate industry in the state with its brand that often people dealing with BR in his capacity as registrar of REBA had initially understood that BR worked for REIWA before the matter was clarified. In BR's view, separation of the regulation of realty in the state and delivery of services to real estate agents was important and needs to be strengthened.

Standard forms

13. IHO asked if BR had ever been aware of any issues with availability of REIWA's standard forms.
14. BR said that, despite the condition placed upon REIWA in its previous authorisations that it make these forms available to members of the public and non-REIWA agents, as far as he was aware these forms were not available to real estate agents who were not members of REIWA and that accessing the forms required a person to become a member of the institute. BR said he would receive a complaint about this from non-member agents once or twice a year during his time at REBA. BR noted that REIWA's forms were the only ones currently produced in Western Australia.
15. IHO asked if this included real estate training organisations other than REIWA. BR confirmed that he is aware of one agent who applied for, and was granted, access to REIWA forms but at a cost much greater than that charged for the same forms supplied to REIWA members.
16. BR noted that the content of some of REIWA's forms had been of concern to him in the past. BR noted that REIWA is an industry body which represents, and operates in the interests of, real estate agents. This organisational purpose could potentially conflict with representing and looking after the interests of consumers and the public more generally.
17. BR described the financing clauses of the standard offer and acceptance document owned by REIWA – this document operates as part of the standard form sale and purchase contract for real estate in WA with the standard form clauses document, owned and overseen by a joint working group of REIWA and the Law Society of WA, forming the remainder of the contract.
18. REIWA's offer and acceptance document is the only one available in the Western Australian market. The clause allows for the prospective purchaser to exit the contract due to the purchaser's finance not being approved. BR said that REIWA had, at one stage, attempted to alter this clause to reduce the number of circumstances in which prospective purchasers may exit without penalty under this clause. BR noted that REBA had opposed this change due to consumer detriment concerns and told REIWA that, if REIWA did not remove the change, REBA would produce its own offer and acceptance document. REIWA threatened

to withdraw its offer and acceptance document from the market but eventually withdrew its changes.

19. BR expressed concern that, while REBA had had dedicated resources to operate in this way, a regulator with a more general portfolio – such as the current Department of Commerce – may have less resources to contribute and therefore have less power to oversee the industry and ensure that all interests are managed and considered in developing and maintaining standard form documents for use by real estate agents and others.
20. BR said that, in his view, clauses in the property management authority standard form contract also raised concerns. BR stated that the liquidated damages stipulated by the contract should it be cancelled by the owner was 50% of the payment to which the agent would have otherwise been entitled. BR noted the managing agent could deduct these funds from funds held in trust for the owner, but that this clause was contained in a different part of the document.
21. BR noted that the same contract stated that the agent may transfer, sell or assign the agent's rights to a third party without first obtaining the owner's consent. BR said this clause was unenforceable under the law but consumers would not realise this and may lead to consumer detriment.
22. BR reiterated that he believed REIWA derived significant income from the provision of its standard form documents and training. BR noted this may be particularly significant due to the decrease in the use of an alternative funding source for REIWA, its multiple listing service.

Concluding comments

23. IHO thanked BR for this time and clarified that the ACCC would prepare a file note of this discussion to be placed on the public register once BR had had an opportunity to consider its accuracy.