REAL ESTATE INSTITUTE OF AUSTRALIA

Modernising Australia's anti-money laundering and counter-terrorism financing regime

REIA submission on the consultation paper on reforms to simplify and modernise the regime and address risks in certain professions.

June 2023

Acknowledgment of Country

The Real Estate Institute of Australia (REIA) acknowledges the Traditional Owners of Country throughout Australia. We pay our respect to them, their culture and their leaders, past, present and emerging.

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INTRODUCTION

The Real Estate Institute of Australia (REIA) is the professional body for Australia's real estate sector and was established in 1924.

Today, REIA represents real estate practitioners and agencies through our work across policy and political action, media advocacy, market research and evidence, industry excellence and national leadership and networks.

Real estate is the backbone of Australia's economy and businesses sector.

Agencies employ 130,000 Australians and the Australian property industry is worth $300 billion to the Australian economy as a measure of GDP.

Real estate is a relatively unique sector as it's a large segment of the Australian economy servicing nearly all Australians almost exclusively by small businesses.

To put this in perspective, there are 44,000 Australian real estate agencies Australia wide with 99% of these being small businesses.

At the same time our consumer base is considerable, with our outreach estimated to be:

- 6.9 million Australians helped into home ownership or rentals each year.
- $350 billion in home sales settled the last recorded financial period.
- $78 billion in rent receipts collected annually.
- $3 trillion in rental assets under management.
- Combined residential real estate asset value of $9.3 trillion.
- Combined commercial real estate asset value of around $1 trillion.

Be it home sales, residential or commercial rents or large scale commercial and residential transactions real estate businesses have both a large financial role; as well as a very substantial Personal Protected Information (PPI) role across buyers, sellers, tenants, investors, and any other parties to a deal.

Thank you to the Attorney General's Department for the opportunity to contribute to the consultation paper on reforms to simplify and modernise the regime and address risks in certain professions (the Consultation Paper).

REIA RECOMMENDATIONS

REIA makes the following recommendations in response to the Consultation Paper:

Recommendation 1: That the Attorney General's Department clarifies the risk profile and specific pain points within a real estate transaction for AML.

Recommendation 2: Once a joint industry-government risk profile and pain points are established, a real estate regime focus on awareness and partnership and 'by exception' red flag reports and targeted audits.

Recommendation 3: Residential leasing is not included in the scope of future consultations.

Recommendation 4: A comprehensive data audit is undertaken of a real estate property journey be undertaken as the next step to the Consultation.

Recommendation 5: A cost-benefit analysis is developed specific to real estate for the expansion of the program to a tranche-two entity.

REIA POSITION

REIA recognises the need to comply with our international obligations and seeks further clarification on a range of matters within the Consultation Paper as it relates to the proposal to extend real estate agents to tranche-two gatekeeper entities.

REIA would welcome partnership with government on this reform as a positive opportunity and has provided the following preliminary suggestions for real estate practitioners to assist in the fight against anti-money laundering (AML) in the key areas of:

- Awareness and partnership
- Red flag reports
- Targeted audits

SUBMISSION APPROACH

The Consultation Paper poses 36 questions relating to the proposed, but as yet, unclear reforms to the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (the Act) and how it impacts Australian real estate businesses.

REIA has elected to respond to the five questions that relate to real estate:

- How should the Act regulate real estate agents so that they can manage their AML/CTF risks? Are there international examples that have worked well for this sector?
- Do you have any suggestions on how real estate should be defined for AML/CTF purposes?
- In your view, are there any existing obligations for real estate agents that could interfere with their ability to comply with the six key AML/CTF obligations?
- Are there any existing practices that would duplicate AML/CTF requirements? If so, do you have any suggestions on how these practices could be leveraged for the purpose of AML/CTF compliance?

REIA has compiled four preliminary recommendations to the Consultation Paper.

LIMITATIONS OF SUBMISSION

REIA has a range of clarifications that relate to the Consultation Paper that have been raised with the Attorney General's Department. These are:

- The Consultation Paper focusses entirely on the introduction of compliance rather than addressing the policy intent at hand: How will extending the AML/CTF tranche-two regime to real estate agents result in the intervention and capture of more money launderers?
- What are the specific pain points in residential and commercial real estate transactions the Attorney General's Department is seeking to address in the proposal to extend tranche-two to the real estate profession?
- Should real estate agents be included as a tranche-two entity, what in the Attorney-General's Department's view new and unique data trails can real estate agencies provide that lawyers, conveyancers, accountants, banks and land title registries already have visibility of?

With these clarifications outstanding, it is very difficult to meaningfully address the Consultation Questions and REIA notes this as a limitation throughout our submission.

REPONSES TO SPECIFIC CONSULTATION QUESTIONS

1. ***How should the Act regulate real estate agents so that they can manage their AML/CTF risks? Are there international examples that have worked well for this sector?***

The Act should only regulate high risk real estate transactions and specific pain points that address and directly intervene with anti-money laundering behaviour.

REIA is awaiting clarification of what this is from the Attorney General's Department and was advised in an Industry Roundtable with the Real Estate Sector (the Roundtable) held on 7 June 2023 that this information would only be disclosed 'later in the consultation.'

The Attorney General's office have advised "there are parts of a real estate transaction that would add to, or provide information not otherwise seen, by other regulated entities," but to date have not advised what this is

RECOMMENDATION 1:

That the Attorney General's Department clarifies the risk profile and specific pain points within a real estate transaction for AML.

REIA is also compiling a series of international case studies from advanced economies on their respective compliance regimes and will provide this as a supplementary report.

REIA does not support the emulation of the New Zealand framework for real estate agents which costs $30,000 – $100,000 per business; with no clear evaluation of how all this reporting is directly utilised by authorities. This is generally costed back to the consumer.

REIA would also like to note the range of providers from New Zealand currently promoting AML reform for real estate agents as a fait accompli and that it will be the same program as in New Zealand. This is creating confusion for Australian industry. This type of racketeering behaviour was raised at the Roundtable with REIA's concern remaining unaddressed.

In the absence of clarity in relation to risk areas, REIA believes the following three key areas would provide greatest value to authorities in the fight against AML to help us meet and achieve our international obligations:

- **Awareness and partnership:** National-wide CPD workshops held with the Australian Federal Police and real estate practitioners with a focus on identifying and reporting suspicious behaviour via an online form.
- **Red flag reports:** Red flag forms provided to the state land based registries for each property transaction before an illicit property transfer actually occurs.
- **Targeted audits:** A percentage of real estate agencies are selected at random for a desktop or field audit for client lists and sales activity to be monitored for AML behaviour each year in line with existing audit cycles.

RECOMMENDATION 2:

Once a joint industry-government risk profile and pain points are established, a real estate regime focus on awareness and partnership and by exception red flag reports and targeted audits.

2. *Do you have any suggestions on how real estate should be defined for AML/CTF purposes?*

It is REIA's view any compliance program should be directly based on risk profile.

The Attorney General's Department are yet to provide clarity on what the areas of greatest risk within either a residential or commercial real estate transaction represent.

Indeed, the Consultation Paper provided case studies on a range of proposed entities to cover in tranche-two, which did not detail a single instance of a real estate practitioner being involved in illicit anti-money laundering behaviour.

It is important to note the following when considering risk, real estate, and the role of money laundering:

- Any unfinanced property transaction triggers a direct report to the Australian Taxation Office.
- Real estate agents generally do not accept cash for property transactions due to security risks and would happily make this a blanket national standard or law.
- Real estate agents are not generally involved in the formation of trusts.
- The legal transfer of property ultimately lies with State and Territory Governments through their respective land registries not real estate agents.

A blanket compliance approach across all businesses unless all data is completely verified and utilised by authorities in the fight against money laundering should not be introduced.

REIA at this time does not support AML-CTF gatekeeper compliance for residential leasing activities, given the significant rental crisis in Australia this is simply another administrative hurdle and cost in what a low-cost transaction for a renter is currently.

At the Roundtable in June, the direction given by the Attorney General's Department was that this really related to commercial leasing, and we seek formal confirmation that this is the scope moving forward.

RECOMMENDATION 3:

Residential leasing is not included in the scope of future consultations.

3. ***In your view, are there any existing obligations for real estate agents that could interfere with their ability to comply with the six key AML/CTF obligations?***

Under each State and Territory agents Acts, real estate agents are obliged to act in the best interest of their clients, be they vendors (those selling a house) or investors (those renting a house). These state laws require agents to act with due skill, care, and diligence as well as act ethically and honestly.

Reporting suspicious activities against clients or parties to a transaction naturally is contrary to their best interests and places the practitioner in a conflicting position.

Real estate practitioners are also subject over forty pieces of legislation in day-to-day practise, including Federal privacy laws. REIA understands an exemption to Privacy Act reforms applies to any AML related activity of which there is currently a parallel review.

4. ***Are there any existing practices that would duplicate AML/CTF requirements? If so, do you have any suggestions on how these practices could be leveraged for the purpose of AML/CTF compliance?***

REIA estimates across a sale of property, across banks, conveyancing, and the legal transfer of property at least 3 – 5 verifications of identify is required, and all these parties could make reports as they relate to suspicious behaviour and any other declarations.

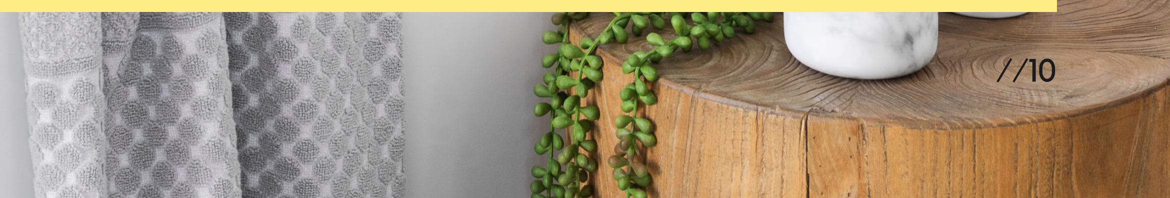
Banks are of course already a reporting entity, and are covering all financed transactions for real estate. Real estate agents as marketing professionals have no new additional data, evidence or intelligence to report that is not already collected by banks, lawyers, conveyancers and land title registries.

REIA has questioned the Attorney-General's Department what new data trails a real estate agency can provide to contribute to an AML compliance program and are yet to receive a clarification on what these represents.

REIA also notes that some properties are sold and leased independently of real estate agents that would fall outside of a tranche-two scheme, but these would always generally engage banks, conveyancers, and registries.

REIA would like to point out that as it relates to real estate, land registries in each State and Territory would be far better placed to understand AML/ CTF screening and reporting as resourced government agencies over small businesses. This may also allow authorities to prevent the transfer of property before the crime is committed.

REIA strongly recommends before the next Consultation that an audit of all available data points across a real estate transaction be conducted by banks, lawyers, conveyancers and land title registries to see where the gaps lie.



RECOMMENDATION 4:

A comprehensive data audit is undertaken of a real estate property journey be undertaken as the next step to the Consultation.

REIA has requested a copy of a 2017 report by KPMG that was to quantify the cost to business; and benefits back to the community of real estate agents being covered by tranche-two. To date the findings for this report has not been released.

Given that real estate agents cannot contribute any new data or intelligence, in the absence of the KMPG report being released, REIA strongly recommends a cost-benefit analysis specific to real estate is developed and made public.

RECOMMENDATION 5:

A cost-benefit analysis is developed specific to real estate for the expansion of the program to a tranche-two entity.

THANK YOU

REIA