

19 December 2011

Office of Hon Judith Collins
Private Bag 18041
Parliament Buildings
WELLINGTON 6160

Dear Hon Collins,

1. Congratulations on your appointment as Minister of Justice.
2. I am writing to you in my capacity as Chairperson of the Real Estate Agents Authority (the Authority) to provide you with summary information including:
 - a. The Authority's role, functions and responsibilities
 - b. How the Authority is governed and managed
 - c. How the Authority operates and what it delivers
 - d. Key projects and issues
 - e. Key stakeholders
3. The 2011-2014 Statement of Intent is enclosed, and provides a more comprehensive overview of the Authority and its direction.
4. I would be happy to provide any further information you might find useful and look forward to meeting with you at your convenience.

Role, functions and responsibilities

5. The Authority is established under the Real Estate Agents Act 2008 (the Act). It undertook responsibility for carrying out its legislative functions and obligations on 17 November 2009. It is a Crown Agent (the form of Crown Entity which must give effect to government policy when directed by the responsible Minister).

6. The Act and the Authority came into existence as the previous framework of self-regulation set out in the Real Estate Agents Act 1976 was regarded as no longer fit for purpose.

7. The intention of the Government in introducing new legislation and a new independent regulatory authority was to:

“... provide a modern regulatory framework to protect the consumer when buying or selling property, and ... restore confidence in the real estate industry”¹.

8. The purpose of the Act follows this intention, and is to:

“...promote and protect the interests of consumers in respect of transactions that relate to real estate and to promote public confidence in the performance of real estate agency work...”.

9. The Authority’s functions and responsibilities include:

- a. establishing, monitoring and developing entry, continuing education, professional conduct and client care standards for the real estate industry
- b. licensing real estate agents, branch managers and salespersons and maintaining a public register of licensees
- c. informing, educating, advising and influencing consumers and licensees to support the integrity of real estate transactions
- d. responding to enquiries and complaints, investigating problems in the real estate market and ensuring appropriate action is taken to sanction any unsatisfactory conduct, misconduct or illegal behaviour.

10. These functions and responsibilities are typical of independent regulatory and compliance organisations in New Zealand and internationally – they focus on both consumer protection and improvement of industry standards.

11. Responses to concerns and complaints raised about the behaviour of real estate licensees can include providing information, providing compliance advice, referring the complainant and licensee to alternative dispute resolution (which is paid for by the Authority), referring complaints to Complaints Assessment Committees (see paragraph 12 below) or investigation and prosecution by the Authority – depending on the nature and significance of the matter concerned and/or whether it relates to the behaviour of a licensee or unlicensed real estate agency work.

¹ Associate Minister of Justice, Real Estate Agents Bill, First Reading Speech, 13 December 2007.

12. An important feature of the complaints handling element of the Authority's work is that Complaints Assessment Committees (CACs) are appointed to act independently and determine complaints about real estate licensees' behaviour. Should the behaviour be determined to be unsatisfactory conduct, sanctions may be imposed by the CAC and publication of the determination occurs. Should a complaint be considered to amount to misconduct (a higher "test") the matter can be referred to the Real Estate Agents Disciplinary Tribunal which is independent of both the Authority and the CACs and can also impose sanctions including suspending or cancelling licenses. The Real Estate Agents Disciplinary Tribunal also hears appeals against CAC determinations and licensing decisions made by the Authority.

Governance and Management

13. The Authority is governed by a board consisting of "no more than 7 members" appointed by the Minister of Justice. The current members are:
- Kristy McDonald, QC (Chair)
 - John Auld
 - Barrie Barnes
 - Denise Bovaird
 - Joan Harnett-Kindley
 - Peter McDermott
 - David Russell
14. Please refer to Appendix One for brief biographies of each current Board member.
15. The board meets around eight times a year and also operates four sub-committees, as follow:
- a. Audit and Risk – provides guidance, direction and support to the Authority in its governance and accountability functions (financial management and government accountability documents including the Statement of Intent and Annual Report)
 - b. Complaints Assessment Committee - focuses on current Panel Member performance as well as dealing broadly with issues affecting the Authority's performance in its compliance functions
 - c. Continuing Education – provides guidance and direction to the management of the continuing education programme pursuant to Practice Rules approved by the Minister and implemented via Gazette Notice pursuant to sections 15 and 17 of the Act
 - d. Legislation – maintains a view of the effectiveness of the Act and Regulations including identifying issues for discussion with the Minister; provides guidance and direction relating to the administration of Practice Rules relating to Continuing Education and the Code of Professional Conduct and Client Care.

16. A key issue of concern to me as Chairperson of the Authority is that each CAC must include a board member. This means that members are involved in detail in the operational work of the Authority and creates risks for the Authority and those members. It also impacts on the ability of the members to maintain a strong focus on governance, strategy and relationship management at the appropriate level and undermines the ability of members to engage actively with stakeholders in the industry on broader issues where they may also be sitting on CACs determining issues to do with the people or firms concerned.
17. The apparent rationale for this approach - that it ensures members have knowledge of what is going on in the industry - is not a strong reason to continue with it. There are other ways that members can stay up to date with industry developments that create no risks and problems such as those identified above. I would like to discuss this with you when we first meet.
18. The Authority's leadership and management team comprises:
 - Chief Executive (Dean Winter as acting Chief Executive until Kevin Lampen-Smith joins the Authority in February 2012)
 - Operations Manager – Dean Winter
 - Legal Counsel – Martin Sawyers
 - Licensing Manager – Margaret Steel
 - Investigations Manager – Peter Nicholls
 - Compliance Case Management Manager – Leigh Jones

The Authority has 35 staff, including managers. The organisational structure is pictured on Appendix Two.

How the Authority operates

Funding

19. The Authority is funded by fees and levies imposed by regulation (through notice in the *Gazette*). The current fee and levy schedule was set in late 2010 and the Authority has committed to keeping the fees and levies at the same level until at least 2014/15.
20. The Authority's financial situation is stable and assuming levels of licensees remain stable, budgeted revenue and expenditure over the next five years is expected to be sufficient to manage its operations and repay the establishment funding provided by the Ministry of Justice when the Authority commenced operation. Full information is provided in the enclosed Statement of Intent.

Outcomes and Outputs

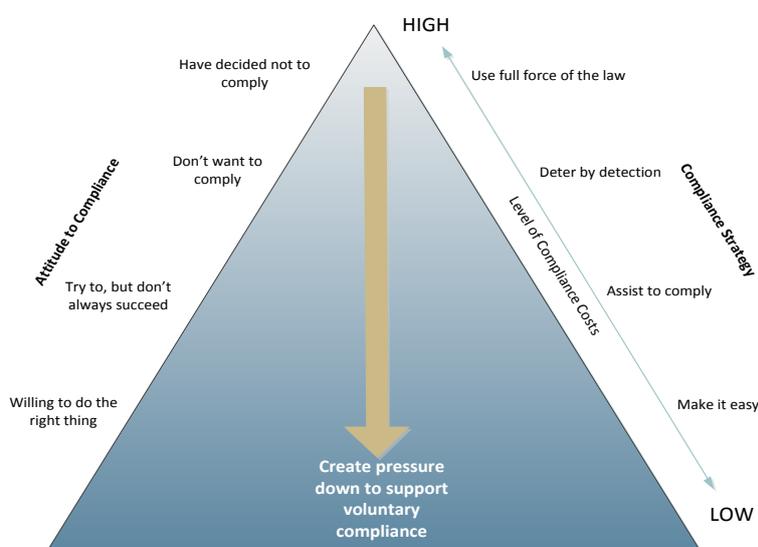
21. The high level outcome that the Authority works towards is to *increase public confidence in the real estate industry*. Our intended impacts are to:
- a. ensure appropriate educational standards are in place
 - b. raise industry awareness of appropriate behavioural practice through education and awareness campaigns
 - c. ensure the industry is well monitored
 - d. provide for effective sanctions for licensees who breach standards
 - e. target consumers, using appropriate channels to raise consumers' awareness of their rights and understanding of how to seek effective redress when things go wrong.
22. Key information about the Authority's outputs and finances is included in the enclosed Statement of Intent. The table below (Figure 1) provides a sense of the scale of what the Authority will deliver in 2011/2012 (numbers reflect *current* trends and/or are indicative – specific forecasts and outputs that will be reported on are identified where appropriate in the Statement of Intent):

Figure 1

Number	Activity
20,000	General telephone, email and letter enquiries
17,000	New license applications, renewals and suspensions
850	Responses (as per paragraph 9) to concerns raised by buyers, sellers and licensees relating to the behaviour of real estate licensees
60,000	Agency Agreement Guides
105,000	Sale and Purchase Agreement Guides sold to licensees for distribution to buyers and sellers
130,000+	Website hits
200+	Media queries
541	Published determinations (10 of misconduct, 92 of unsatisfactory conduct and 439 of no further action) over <u>two years</u> since the Authority's inception

23. Compliance work is increasingly being seen as risk management. Centering a compliance strategy on risk requires an understanding of the risk profile of the industry being regulated and a proportionate and flexible use of a range of tools for achieving compliance within that risk profile.
24. The compliance pyramid (Figure 2) is the primary concept that drives the Authority's approach to achieving its outcomes. The concept here is that the regulated industry will fall into various levels of the pyramid, with different attitudes to compliance and therefore different responses being required to achieve compliance.

Figure 2



25. The range of responses the Authority typically uses to dealing with compliance issues is referred in paragraph 9 above.

Key projects and issues

26. During the 2011 calendar year the REAA revised its operating model (to the approach outlined in paragraphs 23-25 above). A key project that is currently underway to support this is the refresh of its **information communication technology systems**. After following an appropriate tendering process the REAA is currently negotiating a contract with a supplier for a new system that will be implemented by the end of June 2012. Standard project management disciplines are being used to do this, ensuring that risks are managed effectively.
27. A **Continuing Education Practice Rule** was gazetted in November 2011 with all licensees required to undergo continuing education in respect to the Code of Professional Conduct and Client Care during 2012. Work is currently underway to develop and promulgate learning objectives, a curriculum, and training support material to enable this to occur.

28. The **Code of Professional Conduct and Client Care** is being reviewed. A consultation document will be released in December 2011 for response by the end of January 2012. The REAA will report to you thereafter recommending revisions to the Code and seeking your approval to promulgate a revised Code as a Practice Rule pursuant to sections 14 and 17 of the Act. The report will address the issues you must have regard to in determining whether to approve the revised Practice Rule. It is not expected that changes to the current code will be significant, but it is appropriate to review the Code now it has been in operation for two years and doing it at this time enables changes to be included in the continuing education programme in 2012.
29. The Authority identified a number of **policy issues relating to the Act** in a letter to the Associate Minister of Justice, in August 2011; and issues relating to the Regulations under the Act in a letter dated 12 October 2011. I have attached the main text of the letters, setting out those issues, for your information, in Appendix Three.
30. The Authority understands that the responsibility for managing any legislative amendment process lies with the Ministry of Justice, at your direction. However, as the operational regulator of the real estate industry the Authority is uniquely placed to identify and understand possible opportunities to enhance the legislative framework. The Authority will be pleased to provide information and evidence to assist you and the Ministry when considering improvements to the legislation for the benefit of consumers and the industry.

Key Stakeholders

31. The Authority has constructive relationships with:
 - a. consumer organisations such as Consumer NZ and the Home Owners and Buyers Association of New Zealand
 - b. industry representatives such as the Real Estate Institute of New Zealand and senior people from a wide range of real estate businesses and
 - c. government agencies such as the Ministry of Justice, Commerce Commission, Serious Fraud Office and New Zealand Police.
32. There are two significant groups that the Authority has developed and engages with as a key part of its stakeholder relationship strategy.
 - a. the **Regulator's Forum**. This group has been established to meet 2 or 3 times a year to support strong engagement between the Authority, the Ministry of Justice and key industry representatives. Membership may change from time to time.
 - b. the **Continuing Education Advisory Group**. This group advises the Authority on matters relating to the Continuing Education Practice Rule.

Information regarding membership of these groups is in Appendix Four.

33. The Authority's relationships with its stakeholders are positive and constructive. In particular, the relationship with the industry is strong after a challenging start in 2009/2010 when the industry was first regulated and levies were increased to a level which allowed the Authority to fulfil its obligations. The quality of the relationship now is a direct result of the effort that has put into developing and maintaining it; taking an open, pragmatic, "can do" approach to supporting the industry to understand and comply with the still relatively new requirements of the Act.
34. The next Regulator's Forum is being planned for February 2012. This would provide a key opportunity for you to meet directly with significant players in the industry. I will arrange for Authority staff to contact your office to discuss whether you might wish to attend (and the timing can be arranged to suit you should this be the case).
35. The Authority's relationship with the Ministry of Justice is important in respect to the Ministry's policy responsibility and the support it provides to you through its crown entity monitoring functions. The Authority enjoys an open and constructive relationship with the Ministry.
36. Finally, in terms of the Authority's relationship with you, generally I have had an arrangement to meet with the responsible Minister on a monthly basis. This has not always been necessary but I would appreciate the opportunity to establish this arrangement with you initially at least.
37. In addition to this, the Chief Executive and senior staff at the Authority are always available to engage with your office and provide you with information as required. For its part the Authority will ensure that you are informed of key issues, risks or matters that might be of interest to you on a no surprises basis.
38. I look forward to meeting with you, at your convenience.

Yours sincerely

A handwritten signature in black ink, appearing to read "Kristy McDonald". The signature is fluid and cursive, with the first name "Kristy" and the last name "McDonald" clearly distinguishable.

Kristy McDonald, QC
Chairperson

Appendix One – Board members

- Kristy McDonald, QC (Chair)

Kristy has extensive experience as a litigation lawyer and a Crown prosecutor and was made Queen's Counsel in 1999. She has provided advice and representation for private clients, the Crown and a number of State agencies in a wide range of matters over the past 28 years. Kristy has undertaken and assisted with a number of independent Ministerial and other inquiries, and has chaired and advised a number of statutory bodies and Tribunals. In 2008 Kristy was appointed Chair of the Judicial Control Authority for Racing.

- John Auld

John is a barrister who was previously in private practice as a commercial and property solicitor for 40 years. He is a past President of the Taranaki District Law Society and a Council Member of the New Zealand Law Society. John has considerable corporate governance experience across a wide range of Crown and privately owned businesses and is currently Chairman of Port Taranaki Ltd and Company Secretary of the Powerco group of companies. John is a member of AMINZ and was appointed as a Disputes Tribunal Referee in 2009. John is a director or trustee of a number of companies and trusts which own residential, commercial, industrial and rural properties. John previously owned a retail business and is the owner of a dry stock farm. John resides in New Plymouth.

- Barrie Barnes

Barrie has had a long involvement in the real estate industry in sales, management and the Real Estate Institute of New Zealand (REINZ). Living in Auckland, he was appointed a Justice of the Peace in 1982, having acted in both a ministerial and judicial capacity in the District Court, remands and depositions. He is a qualified mediator and arbitrator, and a senior chairperson of a REINZ investigation sub-committee and REINZ prosecutor to a regional disciplinary sub-committee.

- Denise Bovaird

Denise is from Auckland and has held senior corporate and consultancy risk management roles for the last 12 years. She was president of the New Zealand Institute of Chartered Accountants in 2007, served on the Institute's executive board for six years and on the council for 12 years. Denise owns her own risk management consultancy. She has worked on strategic risk management assignments with senior executives and directors in numerous corporate and public sector organisations both in New Zealand and Australia. Previously Denise worked as an investigating accountant with the Serious Fraud Office and has worked in audit and management consultancy for Deloitte in New Zealand and the United Kingdom.

- Joan Harnett-Kindley

Joan has had wide practical experience in the operation and administration of real estate businesses in Christchurch, Dunedin and Wanaka. She has been a REINZ President and committee member of three districts over the past 20 years. Joan has served on licensing sub-committees, investigation sub-committees and has served as chairperson, panel member and prosecutor for regional disciplinary sub-committees. She is a fellow and life member of REINZ and was appointed to the Real Estate Agents Licensing Board in September 2006.

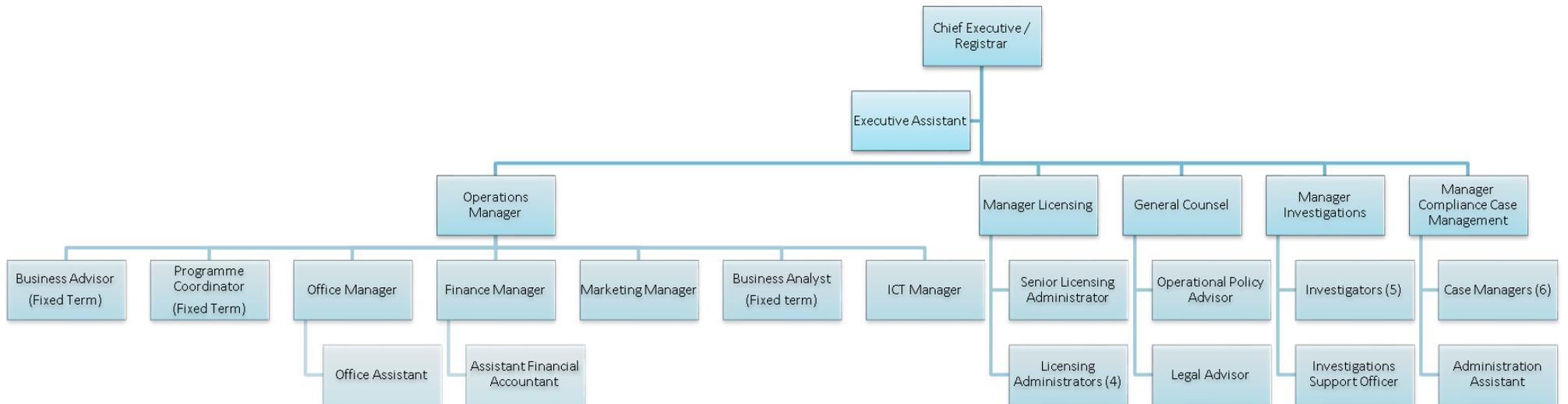
- Peter McDermott

Peter has a significant background in banking, finance and property, and formerly held senior positions at the BNZ and National Australia Bank. He has extensive banking experience in New Zealand and offshore markets, and studied financial innovations at Harvard Business School. He is a director of a number of private companies including an internet-based financial services business. Peter lives in Wellington.

- David Russell

David spent 35 years with Consumer NZ (formerly Consumers' Institute), the last 17 years as chief executive. He is currently on the board of the Domain Name Commission Ltd, ambassador for Lifetime Design (an organisation promoting accessible housing for the disabled and elderly), patron of the Plain English Action campaign, Chair of the Telecommunications Dispute Resolution Council, member of the Securities Commission's Code Committee, director of specialist internet book trader NZ Books Abroad, trustee of the Bougainville Library Trust, and a consultant on consumer related issues. David was awarded a QSO in 2007 and an honorary doctorate in commerce by Massey University in 2008. He lives in Wellington.

Appendix Two – Organisational structure



Appendix Three – Policy issues

Policy issues relating to the Real Estate Agents Act 2008 – from letter of 16 August 2011

With the exception of the first matter (below), which is an apparent drafting error, the other matters listed below have emerged as *potential* problems over the first 18 months of our operation. We will gather information and evidence in relation to these matters as part of our general information collection and operational processes to ensure that there is a sound evidential basis for determining whether they need to be addressed, at an appropriate time:

- The correction of an apparent drafting error in section 133 (potentially able to be dealt within a Statutes Amendment Bill).
- Whether there should be greater flexibility in section 46 regarding the length of the term for which a licence can be granted (to provide for administrative efficiency).
- Whether section 42 should permit the Registrar to hold hearings on the papers when considering objections to licence applications (to provide for administrative efficiency).
- The adequacy of the provisions in the Act enabling the enforcement of orders made by Complaint Assessment Committees (to ensure there are appropriate/low cost ways of ensuring compliance with orders).
- The impact of the various ownership structures of real estate businesses on enforcement and compliance (to reduce avoidance of compliance outcomes).
- Whether the Tribunal should have the power to award costs to the Authority in appropriate cases heard by it (to ensure costs lie in the appropriate place).
- The adequacy of the current provisions dealing with publication of CAC determinations (to clarify the requirements relating to publication to ensure fairness to the parties whilst meeting the public policy requirement to inform consumers).
- The appropriateness of the six month limitation period for bringing summary proceedings under the Act (to enable offences that are not discovered easily to be dealt with).
- Whether the laying of charges by the Authority to the Tribunal in relation to allegations of serious misconduct should be permitted (to improve administrative efficiency).
- The inclusion of Board members as members of CACs (to address the probable conflict between their governance role in relation to performance of CACs and their rights and obligations as members of various CACs).
- The requirement in section 74 that complaints “must” be referred to CACs (to clarify the Authority’s discretionary ability to respond effectively and efficiently to consumer problems).
- Commercial and Residential property management (to ensure that potential harm related to property management continues to be effectively regulated).

- Whether infringement offence provisions might be appropriate (to ensure there are appropriate and proportionate ways of encouraging compliance).
- The adequacy of the information gathering provisions relating to investigations (to provide for effective and efficient investigations of more serious matters).
- Whether the current approach to managing entry level requirements to the industry through Regulation is appropriate, compared to enabling the Authority to do this through Practice Rules (to enable the Authority, as it gains further expertise in real estate regulation, to manage industry standards from entry through to continuing education).

Policy issues relating to the Regulations under the Real Estate Agents Act 2008 – from letter of 12 October 2011

The Authority is engaging with your officials on a number of possible regulatory amendments. Of these there is one regulatory change that we would like to bring to your attention – moving advertising of applications for licences to the Authority’s website.

Section 39 of the Act requires an applicant to advertise their application for a licence in the prescribed manner. The prescribed manner is set out in Regulation 7 of the Licensing Regulations and requires applicants to put two adverts in an approved newspaper. The purpose of this requirement is to ensure public scrutiny of the application and to provide a way for those who might oppose an application to become aware of it.

Since 17 November 2009 the Authority has received approximately 3100 new applications and fewer than 11 objections have been received. None of these objections have resulted in an application being declined. By comparison, advertising costs are approximately \$500 per application.

The Authority proposes that the Licensing Regulations be amended to permit publishing a list of applicants seeking approval to hold a license on the Authority’s website instead of requiring publication in a newspaper. The Authority would initially undertake some advertising in public newspapers to alert the public to the need to view the website to see those applying for licenses. This could be managed within the Authority’s forecast operating costs.

Publishing applicant information on the Authority’s website would still address the purpose of the requirement to publish, but at less cost to applicants. Assuming that there are approximately 1200 new applications annually the total reduction in compliance costs for applicants would be \$600,000/annum.

We are of the opinion that changes to the Licensing Regulations to implement this change would be welcomed by the real estate industry and would be a positive move to increase the efficiency, while reducing the costs, of the licencing process.

The Authority understands that responsibility for managing any amendments to Regulations lies with the Ministry of Justice, subject to your direction. We are keen to work closely with the Ministry in implementing this change to the licensing process.

Appendix Four

Regulator's Forum - list of attendees at the recent November 2011 Forum:

- Barfoot & Thompson
- Harcourts Group Ltd
- Bayleys Realty Group Ltd
- Anne Duncan Real Estate Ltd
- Colliers International NZ Limited
- First National Group NZ Limited
- McDonald Real Estate Ltd
- Ray White (Real Estate) Ltd
- PGG Wrightson
- Re/Max New Zealand
- LJ Hooker Ltd, Professionals
- Premium Real Estate
- Property Brokers Limited
- Edinburgh Realty Ltd
- Nidd Realty Limited
- Century 21
- Mike Pero Real Estate Ltd
- Knight Frank

Continuing Education Advisory Group – current membership:

- Barrie Barnes, Board Member, REAA
- Sue Chetwin, CE, Consumer New Zealand
- Helen O'Sullivan, CE, Real Estate Institute of New Zealand
- Peter Thompson, MD, Barfoot and Thompson
- Anne Duncan, Principal, Anne Duncan Real Estate
- Deane Pettit, Principal, PGG Wrightson
- Jo-Anne Clifford, National Operations Manager, Harcourts
- Gary Fissenden, CE, Electrical Trades Industry Training Organisation
- John Gray, President, Home Owners and Buyers Association of NZ
- David Bigio, Barrister
- Graham Crews, Real Estate Industry Consultant