

November 2017



Briefing to the incoming Associate Minister of Justice
Hon Aupito William Sio MP

1. The following briefing provides information for the Minister on the following matters pertaining to the Real Estate Agents Authority (REAA):
 - a. Matters that need attention by the Minister.
 - b. The REAA's role, functions and responsibilities.
 - c. How the REAA is governed and managed.
 - d. Further information on matters requiring the Minister's attention.
 - e. The REAA's new strategic framework.
 - f. How the REAA operates and what it delivers.
 - g. Key stakeholders.
 - h. Key projects and issues.
2. There are five matters that require your review and attention:
 - a. **There are four Board members whose terms have either expired** or who have resigned already or are due to resign in the near future.
 - i. The REAA would welcome the opportunity to discuss with the Minister the mix of skills that would best suit the governance of the REAA. Biographies of the current Board members are included as **Appendix 1** to this report.
 - ii. The term of the Chair of the Board, John Auld, expired on 17 August 2017.
 - iii. The first three-year term for Board member Denese Bates QC expired on 21 March 2017.
 - iv. Aaron Bhatnagar has tendered his resignation from the Board by April 2018.
 - v. A vacancy exists on the Board from the resignation of Karin Thomas in mid-2017.
3. Also attached to this document and containing comprehensive information on the REAA are the recently published 2016/17 Annual Report and the Statement of Intent 2017/18–2020/21.
 - b. Ministerial approval of the Real Estate Agents (Continuing Education Practice Rules) Notice 2017. Consultation with the industry closed in November, and a request for approval by the Minister will be forthcoming. It is preferable that the updated practice rules are approved in time for early 2018.
 - c. The REAA is seeking your approval to a change in the level of payments, within the Cabinet Office Fees Framework, made to Complaint Assessment Committee members. This is set out in further detail in this report and will also be the subject of separate correspondence to you.
 - d. The REAA will be submitting against an aspect of the Tribunals Powers and Procedures Legislation Bill currently before the Justice and Electoral Committee. This specifically relates to the power to award compensation and is set out further in this report.
 - e. The REAA recommends that you turn down the request for an exemption for the Property Institute of New Zealand from the Real Estate Agents Act 2008.

Key contacts

4. The following are the key contact details for the REAA:

KEY CONTACT	DETAILS	PHONE
Chair of the Board	John Auld	
Chief Executive	Kevin Lampen-Smith	
Executive Assistant	Sally Betts	

Role, functions and responsibilities of the REAA

5. The REAA is established under the Real Estate Agents Act 2008 (the Act). The purpose of the Act 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.”
6. The REAA’s functions and responsibilities include:
 - a. establishing, developing and monitoring entry, continuing education, professional conduct and client care standards for the real estate industry
 - b. licensing real estate agents, branch managers and salespersons (collectively known as licensees) and maintaining a public register
 - c. informing, educating, advising and influencing consumers and licensees so they can participate with confidence in 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.
7. 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.**

Governance and management

8. The REAA is governed by a Board consisting of no more than seven members appointed by the Minister of Justice. The current members are:

John Auld (Chair)
(term expired on 17 August 2017)

Denese Bates QC
(first term expired on 21 March 2017)

Aaron Bhatnagar
(resigned with effect from April 2018, or earlier as agreed)

Marion Cowden
(first term expires 17 August 2018)

Elizabeth Nidd
(first term expires 17 August 2018)

Anthony Stack
(first term expires 17 August 2018)
9. Please refer to **Appendix 1** for brief biographies of the Board members.
10. The REAA’s senior leadership team comprises:

Kevin Lampen-Smith
Chief Executive/Registrar

Anna Fenton
General Counsel

Currently vacant
Head of Regulatory Services

Steve Bruce
Head of Strategy and Insights

Tanya Dunlop
HR Business Partner

Victor Eng
Head of Corporate Services
11. As at 31 October 2017, the REAA engaged 50 people to deliver services. This is comprised of 40 permanent staff (38 full-time and two part-time), five on fixed-term contracts and five contractors. A further three employees are currently on maternity leave. All are Wellington based.

Further information on matters requiring the Minister's attention

APPROVAL OF THE REAL ESTATE AGENTS (CONTINUING EDUCATION PRACTICE RULES) NOTICE 2017

- 12.** Following industry consultation in 2016, on its Continuing Education Framework, the REAA is amending the Real Estate Agents (Continuing Education Practice Rules). The primary changes:
- a.** clarify the timeframe within which continuing education must be completed
 - b.** provide flexibility in the requirements for non-verifiable continuing education
 - c.** require certain licensees to undertake refresher training
 - d.** prescribe additional circumstances in which an exemption can be obtained.
- 13.** It is intended that the new Practice Rules will be in place by early 2018.
- 14.** A separate paper seeking the Minister's approval to the Real Estate Agents (Continuing Education Practice Rules) Notice 2017 will be submitted once the submissions from the consultation have been reviewed and consideration given to any required changes.

SUPPORT FOR AN INCREASE IN FEES PAID TO COMPLAINT ASSESSMENT COMMITTEES WITHIN THE CABINET OFFICE FEES FRAMEWORK

- 15.** Three-person Complaint Assessment Committees (CACs) determine the outcome of complaints made to the REAA. Further information on the complaint process and the role of CACs is included later in this report.
- 16.** Suffice to say, the role requires a senior level of professional competency. Currently under the Cabinet Office Fees Framework, hourly rates paid to the members of a CAC are \$81.25 for the chair, \$62.50 for the deputy chair and \$50 for the member.
- 17. The REAA does not consider the current hourly fees adequately reflect the complex role expected of CAC members,** hence the review of the applicable level within the Cabinet Office Fees Framework. CAC decisions are complex, and they attract public attention – sometimes significant attention – if the complaint is

appealed through the court process. A number of cases are the focus of significant media attention, and a small number also find their way through to the Court of Appeal. The new level that the REAA believes better reflects the role of CACs would change the hourly rates to \$102.25 for the chair, \$80.90 for the deputy chair and \$64.75 for the member.

- 18.** The REAA has feedback from CAC members that the current fee level limits the time that they are able to allocate to this part-time role as compared to other commitments they may have. Each three-person CAC generally includes a lawyer with more than seven years' experience, a licensed real estate agent and a consumer representative, who is typically someone with current experience as a Disputes Tribunal adjudicator.
- 19.** The REAA is seeking your approval to a change in the level within the Cabinet Office Fees Framework for CACs. A detailed letter requesting your support for this change will be delivered to you shortly.

THE REAA WILL BE SUBMITTING AGAINST AN ASPECT OF THE TRIBUNALS POWERS AND PROCEDURES LEGISLATION BILL CURRENTLY BEFORE THE JUSTICE AND ELECTORAL COMMITTEE

- 20.** The Tribunals Powers and Procedures Legislation Bill (the Bill) contains substantive amendments to the Real Estate Agents Act 2008. Most notably, the Bill introduces the ability for CACs to refer a case of unsatisfactory conduct to the Real Estate Agents Disciplinary Tribunal (Tribunal) for consideration of whether compensation of up to \$100,000 should be awarded.
- 21. While the REAA is supportive of a compensation power being available on findings of unsatisfactory conduct, it is concerned at the practical implications this will have if compensation is only able to be ordered by the Tribunal,** administered by the Ministry of Justice (the Ministry). The REAA is concerned that the amendment will lead to an increased number of appeals, both from licensees unhappy with CAC decisions to refer compensation cases to the Tribunal and from complainants.

22. Similarly, compensation cases will be an entirely new stream of cases for the Tribunal in addition to its existing caseload. From inception, cases that go to the Tribunal can already take about a year or longer to be resolved. The REAA is very concerned about continuously improving the timeliness of the complaint process, and this policy setting is more than likely going to have the opposite effect.
23. The REAA's submitted solution to this is to allow a CAC to deal with lower-level claims for compensation up to the revised level for the Disputes Tribunal included in the Bill of \$30,000. This will prevent lower-level compensation claims having to be referred to the Tribunal, thus allowing the Tribunal to operate more efficiently. The REAA would have welcomed more discussion on this with the Ministry prior to the drafting of the Bill and will now wait to make a submission to the select committee.
24. The REAA is working closely with the industry on this matter and has met and discussed the Bill with senior industry executives and the Real Estate Institute of New Zealand (REINZ).
25. The REAA is also interested in having **alternative dispute resolution methods enshrined in legislation**. Currently, the REAA very successfully utilises alternative dispute methods but can only do so with the agreement of both parties. Greater powers are requested for the REAA to require alternative dispute processes to become the norm, as in most cases, it is a lower-cost and higher-quality outcome for both licensees and consumers.
26. The REAA is raising this matter with you as a 'no surprises' issue. Select committee timelines will be released in due course. It is expected that submissions on this Bill will close some time in early to mid-2018.

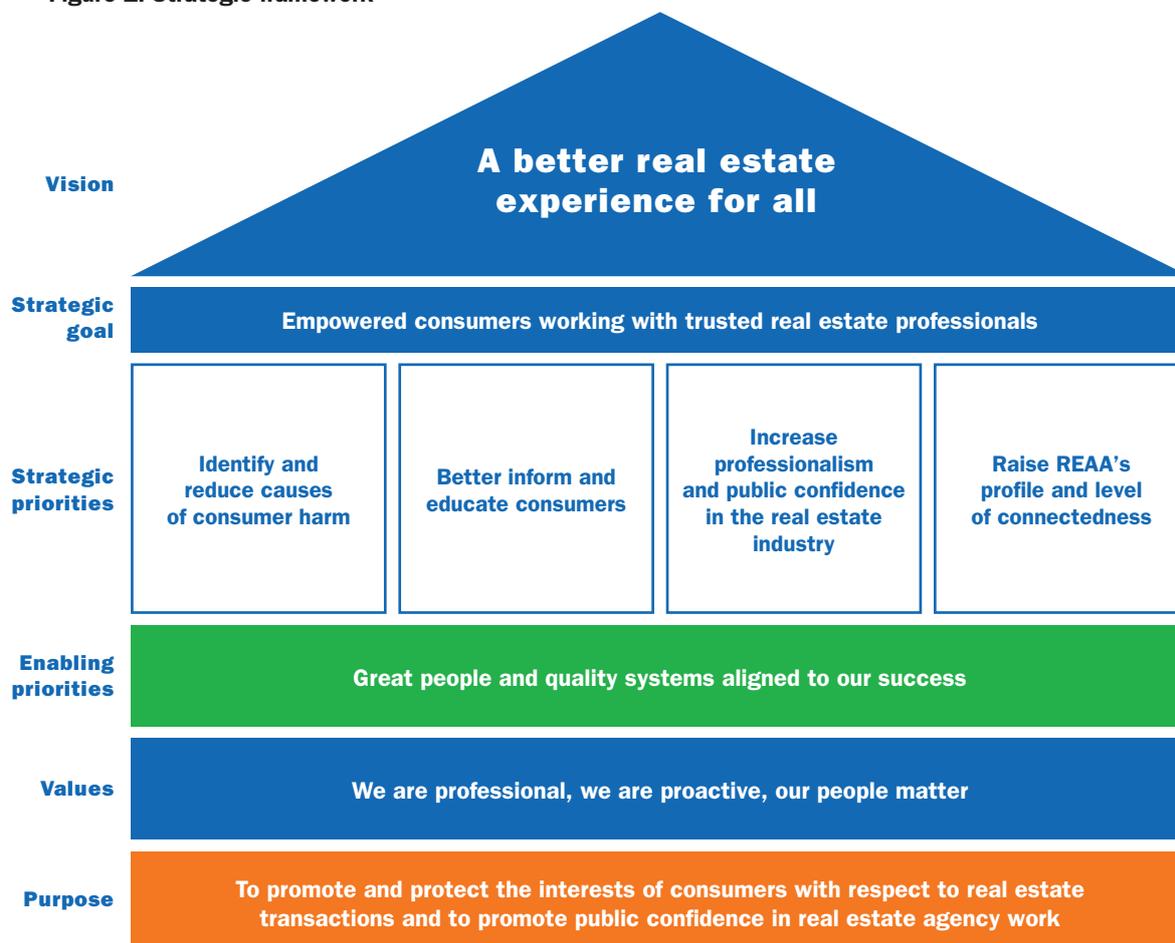
TURN DOWN AN EXEMPTION REQUEST FROM THE PROPERTY INSTITUTE OF NEW ZEALAND FROM THE ACT

27. Section 156 of the Act allows a person or class of persons to carry out real estate agency work without a licence by exemption approved by the Minister. To date, only one exemption has been granted to registered members of the New Zealand Institute of Forestry (NZIF).
28. The REAA submitted against the NZIF exemption and, in principle, is against the granting of exemptions where the services are core real estate agency work. **Further exemptions have the risk of watering down consumer protection and access to redress – principal reasons for the Act in the first place.**
29. Exemptions do have their place when considering services that are not core real estate agency work that risk being captured by the Act.
30. The REAA has been providing feedback to Ministry officials on the exemption request by the Property Institute of New Zealand (PINZ). The REAA is concerned that a rather limited and less than transparent approach is used by the Ministry in dealing with exemptions to the Act. The REAA would prefer a much more transparent approach where the full request is publicly available and open public consultation is carried out with full transparency and publication of submissions and, as necessary, cross-submissions.
31. There are material negative differences for consumers between a PINZ regime and what is contained in the Act. The request itself is weak, citing for example continuing education matters as a reason for a shift to a self-regulatory environment that the Act was put in place to move away from.
32. The REAA believes the Ministry may have completed its recommendation to the Minister on an exemption request from PINZ. The REAA seeks an opportunity to discuss this further with you prior to any decision being made.

The REAA’s new strategic framework

- 33. The REAA commenced a strategic review exercise in October 2016. That process, which included discussions with key industry stakeholders and the Ministry, has culminated in a new strategic framework that is incorporated in the Statement of Intent 2017/18–2020/21.
- 34. A key element of the new strategic direction is for the REAA to be more proactive and consumer focused. Simplistically, **the new strategic goals move the focus of the REAA from the bottom of the cliff, as a complaint-handling entity, to the top of the cliff to have an increased focus on educating consumers, reducing consumer harm and improving industry professional standards.** The new strategic framework is set out in Figure 1 below.
- 35. To be effective in educating and informing consumers, the REAA will be more proactive in its messaging and use of data to inform actions that will reduce or prevent problems and issues for consumers. Research has also told us that our name is a turn-off for consumers. Including the word ‘agents’ in our name implies to consumers that we are not an organisation that is there to meet their needs or to look after their interests. It blurs, in the eye of the consumer, the independence of the REAA. There is also confusion between our role and that of the industry body, the REINZ.
- 36. The REAA has been working on use of a new operating name for REAA that drops the word ‘agents’ so it becomes the Real Estate Authority, or REA for short. The new name has tested very positively in research undertaken to date with both licensees and, in particular, consumers. The REAA met and discussed this with your predecessor the Associate Minister of Justice Mark Mitchell in June 2017. Prior to launching use of the new name, the REAA was asked to discuss the new name with both the New Zealand Law Society and the New Zealand Society of Conveyancers and to report back on those discussions.
- 37. The discussions have taken place, and in August, the Ministry was advised that both organisations supported the approach that the REAA was taking. As Parliament has been in recess, this briefing provides the report back to the Minister that the discussions with the organisations took place and that there was support for the initiative.

Figure 1: Strategic framework



38. The REAA has been making good progress on rebranding to the new Real Estate Authority operating name. We are looking to rebrand with the new REA name in January 2018 and to launch new mobile device-friendly websites.
39. Note that the plans to rebrand and to connect more successfully with consumers are all funded from within our current budget.
40. The brand work undertaken to date provided a deeper understanding of the perceptions that real estate licensees and consumers have of the REAA, the work we do and how well our brand reflects our purpose.
41. **Key research findings are that, although licensees and consumers indicated that the REAA plays an important role in the real estate industry, it has a low profile with consumers.** Research also noted that the current name impacts negatively on the public's perception of our independence. **This low profile and limited understanding of how the REAA can add value is inhibiting our overall effectiveness.** For example, the REAA is not top of mind as a source of information and advice for consumers, impacting our ability to educate and inform them so that they feel empowered and participate in real estate transactions with confidence. The REAA is developing a range of actions to address these issues.
42. Progress is also being made on a new consumer sub-brand for the REAA, which was strongly supported by our consumer research. The research found that, **if the REAA really is going to be successful in further informing and educating consumers – one of the key goals of the new strategic direction – a new consumer brand would be critical to achieving that outcome.**
43. The launch of a consumer sub-brand is scheduled to take place at the same time as the launch of the new REA brand. The REAA has created a new consumer brand. The plan is that, in time, it will become known as the source of independent and trusted information for buying and selling real estate, in the same way as Sorted (run by the Commission for Financial Capability) is used by those who want to find out more about planning for retirement.
44. The REAA will continue to work closely with the Ministry and the Minister's office in order to keep all parties well informed about the new branding activities.

How the REAA operates

FUNDING

45. **The REAA is fully funded by fees and levies from licensed real estate agents. No government funding is provided to the REAA.** The REAA reviewed its fees and levies during 2016, and reductions to fees, effective from 1 February 2017, were put in place that reduced the overall cost to the industry by close to \$1 million per annum.
46. The REAA's financial situation is stable, on the assumption that levels of licensees don't drop significantly (currently approximately 15,700). Budgeted revenue and expenditure over the next three years is expected to be sufficient to manage operations. In April 2016, the REAA repaid the remaining \$1 million of the \$6 million in establishment funding that was provided by the Crown when operations commenced in November 2009. A further \$2 million in working capital provided to the REAA has also been repaid to the Crown. Complete financial information is provided in the enclosed 2016/17 Annual Report.
47. The new fees are designed to ensure that, over the next three years, cash holdings are reduced to a level approximating two months of operating expenditure plus accumulated depreciation/amortisation. Should licensee numbers or expenditure levels change outside of expectations, another fee review may be required before the three-year period is up. Current indications are that the property market is cooling, and the impact of this cooling on licensee numbers is being closely monitored.

COMPLIANCE APPROACH

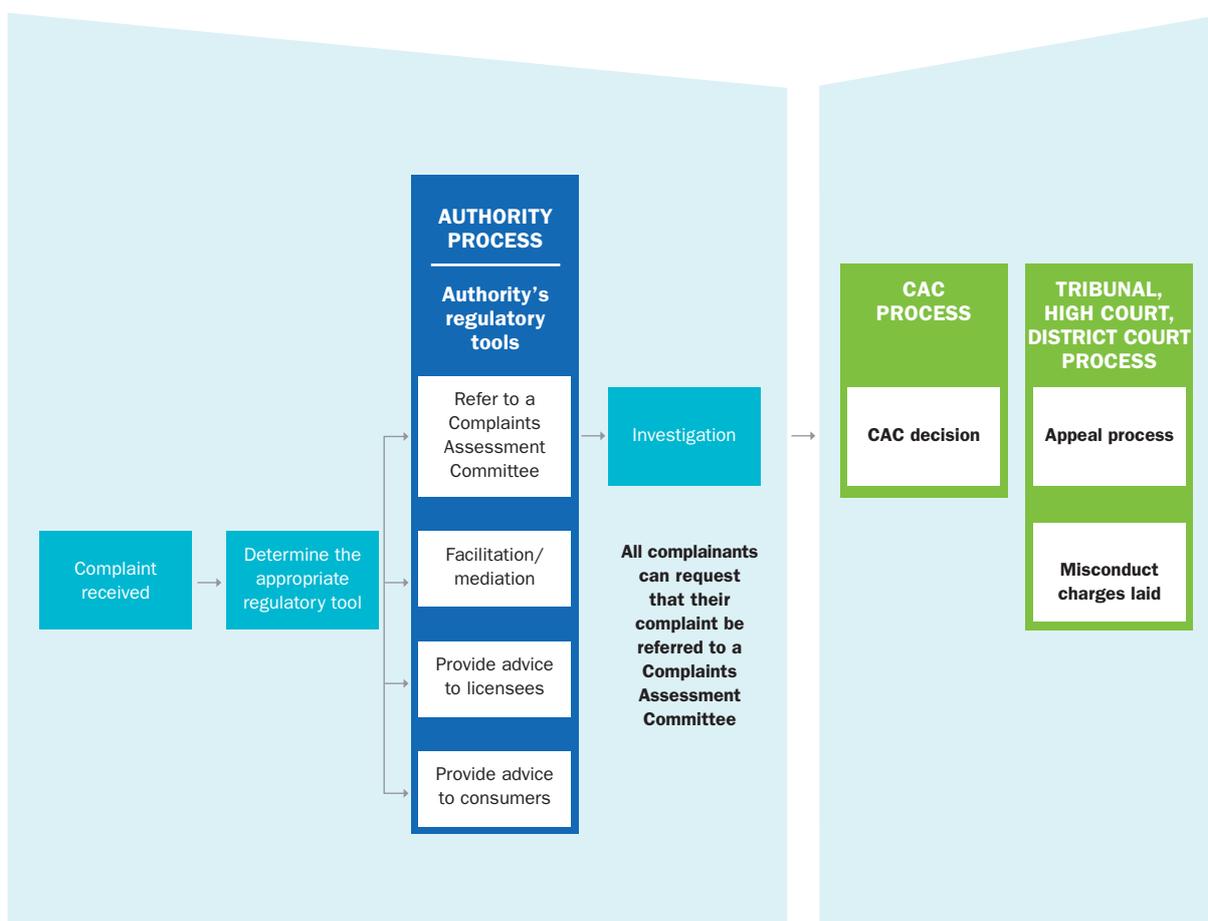
48. Figure 2 below outlines how the REAA processes complaints.
49. Responses to complaints raised about the behaviour of real estate licensees can include:
- providing consumers with information and compliance advice
 - referring the complainant and licensee to alternative dispute resolution

- referring the complaint to a Complaints Assessment Committee
- undertaking an investigation and prosecution by the REAA
- referring the complaint to the Tribunal.

50. The response the REAA takes depends on:

- the likely extent of the harm or risk of harm
- the seriousness of the alleged conduct – whether it is a one-off event or part of ongoing behaviour
- the attitude of those involved towards compliance
- public interest considerations.

Figure 2: Compliance approach



INDEPENDENT JUDICIAL PANELS – COMPLAINTS ASSESSMENT COMMITTEES AND THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

51. CACs comprising three members are appointed to act independently and determine complaints about licensees’ behaviour. Should the behaviour be determined to be unsatisfactory conduct, sanctions may be imposed by the CAC, and publication of the determination occurs.

52. Should a complaint be considered to amount to misconduct, the case is referred to the Tribunal, which is independent of both the REAA and the CACs. The Tribunal is administered by the Ministry. The Tribunal can impose sanctions including suspending or cancelling licences. The Tribunal also hears appeals against CAC determinations and licensing decisions made by the REAA.

Key stakeholders

53. The REAA has good working relationships with:

- a. consumer organisations such as Consumer New Zealand and the Home Owners and Buyers Association of New Zealand (HOBANZ)
- b. industry representatives such as the Real Estate Institute of New Zealand and senior members from a wide range of real estate businesses, both large and small, across all of New Zealand
- c. government agencies such as the Ministry of Justice, the Commerce Commission, the Serious Fraud Office and the New Zealand Police.

54. To give effect to the new strategic goals, new relationships are being formed with organisations including the Commission for Financial Capability,

the Financial Markets Authority and property-related private sector organisations such as Trade Me Property and Homes.co.nz.

55. The REAA has developed specific processes for maintaining an awareness of what is happening in the industry, including the following:

- a. **Regulators' forum:** This group meets twice a year to support strong engagement between the REAA and key industry representatives. Membership is about 30 and changes from time to time.
- b. **Industry advisory groups:** REAA staff meet twice a year with four advisory groups that represent the four different sectors of the real estate industry – residential, rural, commercial and business brokers. Each group has about six members.

Background on other regulatory policy or legislative matters

UNIT TITLES ACT REFORM

56. The REAA is closely following the review of the Unit Titles Act and the associated proposed changes to the disclosure regime when buying and selling unit title properties and increased governance and oversight of body corporate managers. The REAA considers that greater regulation of body corporate managers is in consumers' interests and that existing self-regulatory/membership bodies are not adequately equipped to protect consumers who own and purchase unit title properties.

57. The REAA sees itself in an ideal position to add value in this area with its effective and efficient systems and processes that are now in place. **The REAA would welcome your support to expand the current brief for the REAA to improve consumer protection for those involved in unit title properties.**

ANTI-MONEY LAUNDERING LEGISLATION

58. The REAA is providing commentary and assistance as requested by the Ministry regarding implementation of the Anti-Money Laundering and Countering of Financing of Terrorism legislation.

59. The REAA initially put itself forward to be the supervisor for the real estate industry. The REAA's expertise around licensing,

compliance and enforcement, education and audit systems will now be offered to the Department of Internal Affairs, as the supervisor for most phase 2 sectors, including real estate agents, on the development and delivery of workable regulations and guidelines for the real estate industry.

PROFESSIONAL STANDARDS

60. The REAA has introduced its first professional standard for licensees. The Act empowers the REAA to set professional standards. The standard-setting process provides for the REAA to set the bar in terms of acceptable industry practice and will be able to be used as a benchmark by CACs and the Tribunal when considering complaints.

61. The first standard is on supervision, which has long been a point of conjecture and debate about what is expected. Future topics being considered include standards on auctions and conflicts of interest.

Appendix 1: Board members

JOHN AULD (CHAIR)



John is a barrister who was previously in private practice in New Plymouth for 40 years as a commercial, resource management and property solicitor. He was partner in a national law firm for 22 years before becoming the senior partner in Auld Brewer Mazengarb and McEwen. He is a past President of the Taranaki District Law Society and a past 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 Chairman of the George Mason Centre for the Natural Environment at the University of Auckland and was previously the Chairman of Port Taranaki Ltd

John is a Chartered Member of the Institute of Directors (IOD) and was a Disputes Tribunal Referee from 2009–2012. John is a director or trustee of a number of companies and trusts. He was appointed to the REAA in 2009 and as Chair in August 2013. John lives in Matakana, Auckland.

DENESE BATES, QC



Denese is a Queen's Counsel who has had a wide-ranging civil practice. She has held governance roles in a diverse number of private and professional organisations. She has been involved with various professional disciplinary regimes both as legal counsel and as a council member of the Auckland District Law Society and the New Zealand Law Society. She has served on Law Society complaints committees and has represented the Law Society in disciplinary hearings. She has also been the Chair of the New Zealand Law Society Ethics Committee.

From 2001 to 2009, Denese was a member of the Commerce Commission with a particular responsibility for litigation. She is presently a trustee of the Melanesian Mission Trust Board, which is responsible for a considerable portfolio of assets for the benefit of the Church of Melanesia. She is an executive director of a family-owned manufacturing business. In 2013, she was appointed as a member of the Insurance & Savings Ombudsman Commission, which operates a disputes resolution service for disputes between insurance companies and financial advisors and their customers. Denese lives in Auckland.

AARON BHATNAGAR

Aaron is an investor and venture capitalist based in Auckland. He is focused on value investing in New Zealand and global equities markets and growth investing in technology. He has commercial property interests in New Zealand and Australia. He was a committee member of the New Zealand Shareholders Association Auckland Branch 2012–2017 and is a Chartered Member of the Institute of Directors. He was served as an Auckland City Councillor from 2007–2010 and was Chairman of the City Development Committee responsible for regulatory services, town planning and infrastructure. Aaron was also an accredited RMA Hearings Commissioner between 2009 and 2013.



MARION COWDEN

Marion is a Fellow of the Institute of Chartered Accountants of New Zealand and a Chartered Member of the Institute of Directors in New Zealand. She holds a BSc and BCom from Auckland University and an MBA (with Distinction) from Massey University. She has held senior roles in finance and corporate services in the New Zealand and Australian public services and with the Commonwealth Secretariat based in London.

Her current governance roles include Deputy Chair of the Institute of Environmental Science and Research, Member of the St John of God Hauora Trust and Trustee and Chair of the Finance Risk and Audit Committee for Nazareth Care.



ELIZABETH NIDD

Elizabeth is a licensee and director of Nidd Realty, an independent real estate company. She has 30 years' experience in the real estate industry.

Elizabeth was President of the Otago Branch of the Real Estate Institute of New Zealand (REINZ) for six years and a Regional Director on the Board of REINZ for six years. She is also a Fellow of REINZ and a Trustee of the Otago Peninsula Trust.



ANTHONY STACK

Anthony is a member of REINZ and has been involved in sales and people management for the past 30 years, including 14 years' experience in the real estate industry in Tauranga and Rotorua. He has broad management and governance experience. Anthony has also managed a business franchise for elderly care and spent a number of years working in the grocery sector.

