

23 November 2020

Hon Aupito William Sio
Associate Minister of Justice
Parliament Buildings
Wellington 6160

Tēna koe Minister,

Briefing to Incoming Minister – Real Estate Authority (REA)

The Real Estate Authority (REA) Board and staff warmly congratulate you on your appointment as the Associate Minister of Justice. We understand that responsibility for oversight of the Real Estate Authority, and Real Estate Agents Act 2008 has been delegated to you. We look forward to again working with you.

This letter provides an overview of REA's role, functions, and responsibilities, the key opportunities and challenges faced by the organisation, and a summary of matters that will require your attention in the coming months. We acknowledge that some of this information will be familiar to you, but we provide it for completeness.

Who we are

1. REA is a Crown entity 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." Our regulatory responsibilities include licensing individuals and companies working in the real estate industry, dealing with complaints about licensee behaviour, and providing independent information for people who are buying and selling property. We fulfil our statutory responsibilities by:
 - a. supporting real estate licensees to understand and fulfil their obligations under the professional conduct and client care rules;
 - b. overseeing a continuing professional development programme for licensees;
 - c. providing consumers with an accessible and effective complaints process;
 - d. providing consumers with information to help protect them from harm when they are buying or selling property; and
 - e. overseeing other various rules, notices, regulations, and codes made under the Act.
2. We are governed by an independent Board. The Act provides for a board with no more than seven members with consumer and industry representatives and a lawyer as the Chair. We currently have six members and one vacancy. We are supported by an able senior leadership team led by recently appointed Chief Executive/Registrar Belinda Moffat, and a staff of almost 50. We have one office located on Customhouse Quay in Wellington and offer flexible working arrangements for all our employees to work at the office and/or from their homes.

3. REA is primarily funded by levies from real estate licensees. We receive no government funding. Accordingly, this source of funding is a focus for us, particularly in the current environment where we expect to see fluctuations in licensee numbers. In recent years we have had a healthy level of cash holdings. We have been able to draw on these cash holdings to support the delivery of our functions, with a modest deficit. We are managing our balance sheet with a view to ultimately having cash holdings down to a level approximating two months of operating expenditure, plus capital expenditure.
4. While our current financial situation is stable with healthy cash holdings, we are aware of the need for fiscal restraint in the current environment. We are exercising caution over this financial year until the impact of COVID-19 on licensee numbers is known. While we do not expect to make a budget bid this year, we have identified areas where Crown financial support may be required in the future, including in the event that our levy revenue declines substantially, and/or to support our consumer protection, and qualification and training responsibilities.

Current environment and COVID-19

5. In April 2020, we anticipated that the housing market may be impacted by the COVID-19 restrictions and economic effects. At this stage, those impacts have not arisen, and the market remains buoyant. House prices are continuing to rise. However, stock remains low which is creating a highly competitive and pressured real estate sector. In this environment, we recognise that properly informed consumers and licensee compliance with client conduct and care rules are particularly critical.
6. As at 30 September 2020, there were 15,172 active licensees (salespersons, branch managers and agents) including 601 new licensee applications in the period July-September 2020 (up 42 per cent on last year). This was above our forecast that licensee numbers would reduce in response to the COVID-19 conditions. However, we also have a number of suspended licensees and anticipate that overall licence numbers are likely to reduce to 14,500. As our primary funding source, we are monitoring licensee numbers carefully.
7. In the 2019/20 year, we received 288 complaints about real estate licensees and managed 21,510 phone calls. While last year's complaint numbers reached an all-time low, in the period July-September 2020 we have seen an increase in phone calls, complaint enquiries and complaints of 20 per cent, 26 per cent and 13 per cent respectively compared with the same time last year. At this stage, we are managing this increased activity within our current resourcing levels, but it is placing pressure on our small team. Again, we are carefully monitoring the lift in activity, and focusing our resources on our critical activities of licensing and complaints determination.
8. As the real estate regulator, we work with the real estate sector, a range of government and non-government property sector stakeholders, and the real estate industry membership body, the Real Estate Institute of New Zealand (REINZ), to improve the professionalism of the real estate industry. Raising our level of connectedness is a key focus for the year ahead.

Opportunities and successes

9. **REA has demonstrated resilience in the face of the COVID-19 pandemic.** We transitioned well to remote working during alert levels 3 and 4 and remained fully operational during lockdown. We developed and communicated clear industry guidance at each alert level and also offered a 3-months' extension on licence renewals and the option to suspend at no cost to support the industry through alert levels 3 and 4. Our guidance and financial relief were well received by the industry.
10. However, as discussed above, the economic impact of COVID-19 on the real estate industry is uncertain. From a regulatory and operational risk perspective, the timing, extent, and consequences of COVID-19 on REA also remains uncertain. To better understand the impact of COVID-19, we are monitoring lead economic indicators (at both a macro and micro level) and monitoring operational impacts (e.g. volumes of phone calls, active licences, licence applications and suspensions, complaints, enquiries, engagement surveys for both industry and staff). As noted above, in Q1 of 2020/21 we saw a 26 per cent increase in complaint enquiries from consumers and a 42 per cent increase in the number of real estate licences issued, compared to the same period in 2019. It is too early to determine whether these trends will continue or for how long.
11. **We are developing a target operating model to ensure we are operating within our means.** An efficiency and effectiveness review is being undertaken to inform this work, to reassess, 10 years on from our establishment, how well we are delivering on our statutory obligations, and ensure we have the capability and capacity necessary to deliver successfully for New Zealanders. While we do not currently receive any Government funding, we are assessing issues and opportunities that may mean Government support may be appropriate in the future. We will report to you on the target operating model next year.
12. **Work is underway to define our four-year strategy for 2021-2025.** Our strategic framework outlines our vision, overarching strategic goal, and strategic priorities and has been in place since 2017. Our strategic goal for 2017-2021 is *empowered consumers working with trusted real estate professionals*. This goal is delivered through four strategic priority areas including reducing harm, educating consumers, lifting licensee professionalism, and raising public confidence in the real estate industry. These priorities are underpinned by an enabling priority to ensure we have great people and quality systems. We are in the process of reviewing our 2017-2021 strategy to determine if this remains fit for purpose for the next four years, and/or what areas require adjustment as we look to the future. The outputs of this work will support us in shaping a refresh of our Statement of Intent (SOI) and Statement of Performance Expectations (SPE). We will report to you on this work in early 2021.
13. **Consumer protection and education is a key priority for REA.** Increasingly in recent years, we have turned our attention to our obligations under the Act to "promote and protect the interests of consumers" and "develop consumer information on matters relating to real estate transactions". Our website, www.settled.govt.nz, which guides buyers and sellers through the property journey, is a key part of this

work. People who engaged in a property transaction in the last 12 months were more likely to say they felt 'empowered' during the buying or selling process if they had visited settled.govt.nz (51 per cent) compared to all consumers (39 per cent). Empowering consumers with high quality and accessible information has been a core part of our consumer protection strategy.

14. **Working with the real estate sector to support high standards of conduct is an important primary focus.** Alongside our consumer engagement work, we are also focused on understanding the drivers of risk on licensee behaviour. Engagement with licensees to ensure that high standards of professionalism, conduct and integrity are maintained in the dynamic market conditions is a priority focus. This includes working with the industry to ensure they are aware of trends and behaviour evident from our work on complaints and education. We engage with the sector directly with agency senior management and through various forums hosted by REA.
15. **Property Management Regulation.** As the real estate industry regulator, REA is familiar with issues arising in the property management sector, with a large percentage of licensees also providing property management services. We have a good character test, code of conduct, licensing regime, qualifications, regulations, and a continuing professional development programme that can be adapted to develop a regulatory framework for property managers. Given this we consider that REA could be a strong viable option for overseeing property management regulation. We are ready, willing and able to provide advice and support to policy officials with respect to the development of a regulatory framework for property managers.

Challenges and issues

16. **New Zealand's real estate qualifications are not currently fit for purpose.** A review of the real estate qualifications suite (which are pre-conditions for licensees) is underway to ensure that a robust minimum standard for training and expertise is established. Issues relating to the real estate qualifications suite in New Zealand are two-fold:
 - a. Australian training organisations are providing real estate agent qualifications (after a training period of approximately 12 weeks) to New Zealanders regardless of the person's real estate experience. These qualifications do not cover relevant New Zealand legislation (Real Estate Agents Act 2008) or REA regulations and rules. However, once licensed in Australia, that licence must be recognised in New Zealand under the Trans-Tasman Mutual Recognition Act 1997 (TTMRA). In our view, the qualification is not fit for purpose for the New Zealand real estate industry and enables new licensees to enter the New Zealand real estate sector without adequate experience and training. The increased use of Australian qualifications under the TTMRA undermines the level of quality, knowledge and experience of some licensees in New Zealand and is impacting the overall professionalism of the real estate industry. We consider that this presents a risk to the sector.
 - b. Competition from the Australian short course is, in part, driving low enrolment rates for the New Zealand equivalent agent qualification (duration 24 months), with a growing number of licensees choosing to complete an Australian qualification to bypass the New Zealand qualification. As a result, education

providers have been hesitant to develop a programme for New Zealand, with the current New Zealand agent qualification having been due to expire at the end of this year. We have arranged an extension for enrolment to June 2021 to allow time to develop a new qualification that is attractive to the real estate industry and maintains robust standards.

- 17. Ensuring there is a fit for purpose New Zealand qualification suite is key to ensuring we have high standards of knowledge and professionalism in the New Zealand real estate sector.** In light of the risks identified above, we are working with the real estate industry training organisation (ITO), Skills, and the New Zealand Qualification Authority (NZQA) to review the entire New Zealand real estate qualifications suite, with industry consultation and co-design. Impacting on this work is RoVE (Reform of Vocational Education) which will see a shift of the role of supporting workplace learning from ITOs to providers, a unification of vocational education funding, and the establishment of the New Zealand Institute of Skills & Technology. The outputs of our work in this space may require small amendments to regulations to accommodate the new qualifications. We are working with the Ministry of Justice on this matter and will continue to update you on our progress in 2021. With the pending expiry of real estate agent qualification in June 2021, this work is a priority.
- 18. We are concerned about the limitations of the current legislative framework regarding the application of the fit and proper test to licensing.** A key prerequisite for being granted a real estate licence is the requirement that the applicant is a fit and proper person. We closely scrutinise all applications with regards to the fit and proper person test, and applicants with any criminal history or other concerns are individually assessed. However, our view is that the application of the legislative framework does not align with public expectations of what constitutes a fit and proper person. Most recently, this was discussed with the Associate Minister of Justice at a meeting on 2 March 2020. We are developing an internal policy to define fit and proper and our assessment approach. We are also considering developing, in consultation with the industry, a professional standard on fit and proper to add weight to future assessments and better align with public expectations.
- 19. A current appeal has been pursued to test the bounds of the fit and proper licensing criteria.** This case (*Registrar of the REAA v Cavanagh (Cavanagh)*) relates to an applicant who, whilst practising as a real estate salesperson 13 years ago, was convicted of mortgage fraud totalling almost \$13 million. The Registrar refused an application for a salesperson's licence in January 2020 on the basis that they could not be satisfied the individual was a fit and proper person, in light of the prior serious offending. The applicant appealed the Registrar's decision to the Real Estate Agents Disciplinary Tribunal (READT), which allowed the appeal and granted the individual a salesperson's licence. We have appealed the READT decision to the High Court, so that we can seek clarity on the application of the fit and proper principle under the Act. This hearing was held on 10 November 2020. Victoria Casey QC was instructed to represent the REA. Judgment was reserved, but the Judge indicated that they would try to issue a decision before the Summer

break. We will continue to provide you with updates on the progress of our work on the fit and proper standard, and the progress of this particular case.

20. **We have one board vacancy and the current terms for all current members of the REA Board expire in November 2022.** The Board consists of experts in fields including law, real estate, risk management and finance (brief biographies of the current Board members are in *Appendix 1*). The Board may have up to seven members, of which two must be either licensees or former licensees and the Chair must be a lawyer. The Board currently has six members and all their terms expire in November 2022. It is important that we take steps to support succession planning for the Board, including the appointment of a member into the vacant position. We are available to provide you and the Ministry of Justice with advice on the skills and capability required for the current vacancy and future board appointments.

Matters requiring your attention

Strategic matter	Action required	Date required
REA Annual Report 2019/20	Present the annual report to the House of Representatives	The next available day estimated 26 November
Real estate qualifications suite (see 15 and 16)	Your feedback/approval of amendments to regulations to allow for new qualifications	Approximately April-June 2021
Statement of Performance Expectations (SPE), Statement of Intent (SOI) (see 12)	Your feedback on the draft SPE/SOI and final approval	Approximately March 2021
REA Board (see 19)	Appoint REA Board members	Immediately to fill the vacant position. Other member positions in 2022

21. This letter focuses on the primary issues arising from REA, and I welcome the opportunity to meet with you in the coming months to discuss in more detail.

22. In the meantime, I look forward to working with you to continue our work promoting public confidence in the real estate sector and protecting the interests of New Zealand consumers when they are buying or selling property.

Nāku iti noa, nā,



Denese Bates, QC
Chair, REA Board

CC Belinda Moffat, Chief Executive - REA
Tim Hampton, Deputy Secretary – Sector – Ministry of Justice
Frank Thomas, Senior Advisor Crown Entity Monitoring – Ministry of Justice

Attachments

1. [Statement of Intent 2020/21 to2024/25](#)
2. [Statement of Performance Expectation for the year ending 30 June 2021](#)
3. [Annual Report for the year ending 30 June 2021](#)

Appendix 1 – REA Board Profiles

Denese Bates, QC (Chairperson)

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 2001-2009, Denese was a member of the Commerce Commission with 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, and she is an executive director of a family-owned manufacturing business. She was previously a member of the Insurance & Savings Ombudsman Commission, which operates a dispute resolution service for disputes between insurance companies and financial advisors and their customers. Denese lives in Auckland.

Marion Eades

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 BComm 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 member of the Accreditation Council and Chair of the Audit and Risk Committee, and trustee of the Nazareth Care Charitable Trust, where she also chairs the Finance, Audit and Risk Committee. Previous governance roles include State-Owned Enterprise, a Crown Research Institute, and the Co-operative Bank.

Liz 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 6 years and a regional director on the board of REINZ for 6 years. She is also a fellow of REINZ and a trustee of the Otago Peninsula Trust.

Tony 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.

Latham Lockwood

Latham has worked in Real Estate since he was 21 years old, being part of the 'new generation' in real estate. He is a current licensee and works as a Salesperson at LJ Hooker Palmerston North. He is passionate about governance and sits on a number of boards. Latham is Chairperson of the Kind Hearts Trust, Vice-President of the Manawatu Young Professionals Network, and a Member of Parentline Manawatu.

Latham also has a passion for growth and development, specifically business and people, and is a certified TetraMap Facilitator which explores human nature and how we communicate, collaborate, and connect with each other.

Vern Walsh JP

Vern has a financial services and governance background. He has operated a mortgage broking consultancy for over 20 years and is a registered financial adviser. He had an 18-year career with Westpac Banking Corporation.

For over a decade Vern has jointly operated a governance consultancy and training business, Meeting and Governance Solutions Limited. This company works primarily in the local government, sports, and not for profit sectors.

Vern was previously an elected Councillor for Auckland City Council (1998 - 2007) and a licensing trust member (2001-2007). He is currently a director of the Auckland Regional Amenities Funding Board, a board he chaired for 10 years before standing down as Chair in 2019. Vern has also held governance roles in council-controlled organisations and was a member of the Lottery Environment and Heritage Committee (2002-2008).

Vern is a Justice of the Peace.