

## BRIEFING TO THE INCOMING MINISTER OF JUSTICE ON THE REAL ESTATE AGENTS AUTHORITY

1. The following briefing provides information for the Minister on the following matters pertaining to the Real Estate Agents Authority (the Authority):
  - 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
2. There are no matters that urgently require the attention of the Minister.
3. Also attached to this document and containing comprehensive information on the Authority is the Authority's Statement of Intent 2014/15–2017/18.

### *Key contacts*

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

Chair of the Board	Chief Executive	Executive Assistant
John Auld	Kevin Lampen-Smith	Carmel Sheehan

### **Role, functions and responsibilities of the Authority**

5. The Authority 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 Authority'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<sup>1</sup> and maintaining a public register
  - c. informing, educating, advising and influencing consumers and licensees so they can participate with confidence in real estate transactions

---

<sup>1</sup> Collectively known as licensees

- 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 Authority is governed by a Board consisting of no more than 7 members appointed by the Minister of Justice. The current members are:
  - John Auld (Chair) (term expired on 7 August 2014)
  - Joan Harnett-Kindley (term expired on 22 April 2014)
  - Denise Bovaird (term expires 22 October 2014)
  - Barrie Barnes (term expires 22 April 2015)
  - David Russell (term expires 22 April 2016)
  - Aaron Bhatnagar (term expires 6 May 2016)
  - Denese Bates QC (term expires 21 March 2017)
9. As may be seen from the above list there are currently two Board members whose term have expired. They are both willing and able to continue in their roles. Please refer to **Appendix One** for brief biographies of the Board members.
10. The Authority's senior leadership team comprises:
  - Chief Executive/Registrar
  - Legal Counsel
  - Licensing Manager
  - Investigations and Compliance Manager
11. As at the 30 September 2014 the Authority had 41 staff. This included 34 full time, 3 contractors, 3 fixed terms and 1 casual employee, based in Wellington.

## **How the Authority operates**

### *Funding*

12. The Authority is fully funded by fees and levies from licensed real estate agents. No Government funding is provided to the Authority. The current fee and levy schedule was set in late 2010 and the Authority has a commitment with the Minister of Justice to keep the fees and levies at the same level until at least 30 June 2015.
13. The Authority's financial situation is stable, on the assumption that levels of licensees remain stable (currently approximately 14,000). Budgeted revenue and expenditure over the next three years is expected to be sufficient to manage operations, including repayment of the last \$2 million of establishment funding that was provided by the Ministry of Justice when the Authority commenced operation in 2009. Complete financial information is provided in the enclosed Statement of Intent.

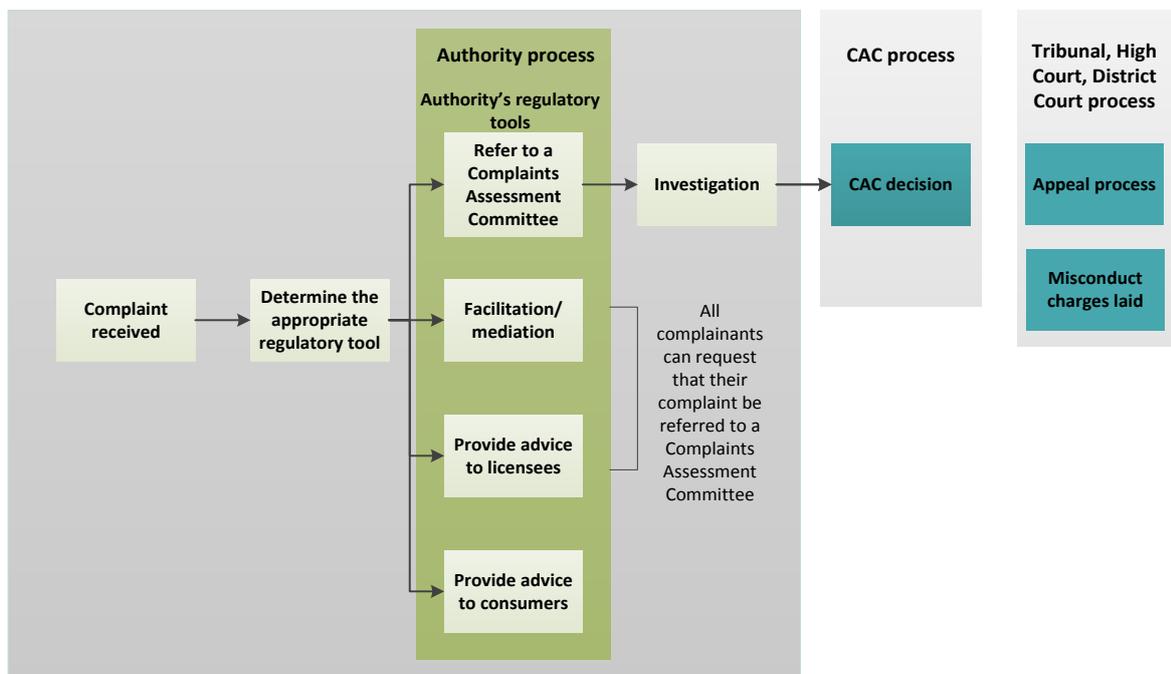
## Outcomes Framework

14. The Authority's main contribution toward the Justice Sector's outcome to live in *a safe and just society* is to ensure consumers participate with confidence in the real estate industry. Our Outcomes Framework below summarises our services, the results or impacts they will deliver and how these will contribute toward the Government priorities for the Justice Sector. In 2014 we reviewed our Outcomes Framework and reprioritised our work processes.



## Compliance Approach

15. The diagram below outlines how the Authority processes complaints.



16. Responses to complaints raised about the behaviour of real estate licensees can include:

- providing consumers 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 Authority
- referring the complaint to the Real Estate Agents Disciplinary Tribunal

17. The response the Authority takes depends on:

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

### **Independent judicial panels – Complaints Assessment Committees and the Real Estate Agents Disciplinary Tribunal**

18. Complaints Assessment Committees (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.

19. Should a complaint be considered to amount to misconduct, the case is referred to the Real Estate Agents Disciplinary Tribunal (Tribunal) which is independent of both the Authority and the CACs. The Tribunal is administered by the Ministry of Justice. The Tribunal can impose sanctions including suspending or cancelling licenses. The Tribunal also hears appeals against CAC determinations and licensing decisions made by the Authority.

### **The Authority's strategic focus for 2014/15**

20. During 2014/15 our focus is on:

- improving consumers' understanding of the real estate industry and their own rights and responsibilities
- improving licensees' skills and knowledge and enhance the interventions we use when identifying non-compliance
- maintaining a regulatory framework that protects consumers and shapes the real estate industry as a whole

## Key Stakeholders

21. The Authority has good working relationships with:
  - a. Consumer organisations such as Consumer New Zealand and the Home Owners and Buyers Association of New Zealand
  - 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 and 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
  
22. The Authority has developed specific processes for maintaining an awareness of what is happening in the industry, this includes:
  - a. **The Regulator's Forum.** This group meets 2 or 3 times a year to support strong engagement between the Authority and key industry representatives. Membership is about 30 and changes from time to time.
  - b. **Industry Advisory Groups.** The Authority's staff meet with four advisory groups 2 or 3 times a year that represent the four different sectors of the real estate industry being residential, rural, commercial and business brokers. Each group has about 6 members.

## Policy issues requiring consideration

### *Applications for exemptions from the licensing provisions of the Act*

23. As Minister of Justice you may approve an application for an exemption from the licensing requirements of the Act if:
  - there is no material consumer benefit to be gained by requiring the applicant to be licensed, and
  - there are sufficient processes in place to ensure competent and ethical conduct on the part of the applicant
  
24. The Ministry of Justice has received two exemption applications:
  - New Zealand Institute of Chartered Accountants (NZICA) – limited to the sale and purchase of an interest in a business (with or without an interest in land). The Authority opposes the Ministry of Justice's preliminary view to recommend to you to approve the exemption request, with a number of terms and conditions. The Authority considers that there remain material consumer benefits to be gained by requiring all people engaging in real estate agency work (including chartered accountants) to be licensed under the Act and, as a consequence the Authority continues to recommend that the request be declined. The Authority considers that there are other more appropriate solutions available to move forward on some of the issues put forward by NZICA.

- SafeKiwi (trading as New Zealand Real Estate Trust) – to provide escrow services, i.e. holding purchaser’s deposits on trust with Public Trust. We understand that the Ministry is yet to process the application. The Authority’s preliminary view is to support the exemption request with certain terms and conditions being put in place:
  - the Authority concurs that there is no material consumer benefit to be gained by requiring SafeKiwi to be licensed, subject to the Ministry putting in place sufficient financial reporting and compliance requirements
  - these financial reporting and compliance requirements should at least be similar to the requirements that the Authority currently has with SafeKiwi, as has been suggested by SafeKiwi in their exemption request.

### **Non-regulatory interventions**

25. The Authority is pleased to advise that agreement has recently been reached with the industry to promote a voluntary change to the contractual terms and conditions of agency agreements used between agents and vendors. The new clauses limit the extent of commission obligations creating greater certainty for vendors and will reduce the volume of commission related complaints both between agents and with vendors. This will be launched publicly in early November.
26. The Authority is also seeking to improve the quality of pre-purchase building inspection reports. This is an area that causes significant and ongoing harm to consumers as that industry is not regulated and the quality of building inspection reports varies significantly.
27. The Authority advocates for greater regulatory oversight of this industry. In the meantime increased interaction and pressure is being put on the industry by the Authority to improve their standards of professionalism. Poor quality building inspection reports and the process that surrounds this aspect of the real estate transaction is a constant theme of the complaints received by the Authority.

## **Appendix One – Board members**

### John Auld – Chairman

John is a barrister who was previously in private practice in New Plymouth for forty years as a commercial, resource management, and property solicitor. He was partner in a national law firm for twenty two 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 currently Chairman of Port Taranaki Ltd. John is a Charter Member of the IOD, a member of AMINZ 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 Authority in 2009 and as Chairman in August 2013. John lives in Auckland.

### Barrie Barnes ED, JP

Barrie has had a long involvement in the real estate industry in sales, management and the Real Estate Institute of New Zealand (REINZ). He is one of the original appointees to the REAA Board. Living in Auckland, he was appointed a Justice of the Peace in 1982, has acted in both a ministerial and a senior judicial capacity in the District Court, remands, arrests and depositions. He is a retired NZ Army Major, awarded the Queen's ED for service, and member of New Zealand's Ready Reaction Force. He is a qualified mediator and arbitrator, and has been a senior chairperson of a REINZ investigation sub-committee and REINZ prosecutor to a regional disciplinary sub-committee. Barrie is a director of one of New Zealand's major private alternative energy companies that distributes LED lighting, Wind and Solar. He has offices in New Zealand and Australia with South Pacific distribution which is supported by financial interests in manufacturing in both China and Taiwan.

### Denese Bates, QC

Denese practised law as a barrister and later as a Queen's Counsel, with 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 Bhatnagar is a professional investor and venture capitalist based in Auckland. He is focused on value investing in New Zealand and global equities markets, and growth investing in the healthcare and technology sectors. He also participated in private equity projects and has a number of commercial property interests around New Zealand. He is a committee member of the New Zealand Shareholders Association Auckland Branch, and a member of the Institute of Directors. He served as an Auckland City Councillor during 2007-2010, where he held the Deputy Chairmanship of Finance, and was then Chairman of the City Development Committee (economic development, town planning, and infrastructure). Aaron was also an accredited RMA Hearings Commissioner between 2009-2013.

### Denise Bovaird

Denise is from Auckland and has held senior corporate and consultancy risk management roles for the last 20 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 carries out strategic risk management work with niche consulting firm Navigatus Consulting. 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 has worked in audit and management consultancy for Deloitte in New Zealand and the United Kingdom.

Denise has served on the Board of the Earthquake Commission from 2010 to 2013 and Chaired the Audit and Risk Committee. Denise has served on the Authority's Board and chaired the Audit and Risk Committee since the inception of the Authority in 2009.

### 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 previously a member of the Real Estate Agents Licensing Board.

### David Russell

David spent 35 years with Consumer NZ (formerly Consumers' Institute), the last 17 years as chief executive. He is currently ambassador for Lifetime Design (an organisation promoting accessible housing for the disabled and elderly), Chair of the Telecommunications Dispute Resolution Council, member of the Securities Commission's Code Committee, member of BRANZ's Advisory Council, 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.