



Australian Institute of Conveyancers Inc.

**RESPONSE TO
CONSULTATION PAPER
ON THE PUBLIC
REGISTER FOR A
NATIONAL
OCCUPATIONAL
LICENSING SYSTEM**

RESPONSE TO CONSULTATION PAPER ON THE PUBLIC REGISTER

Introduction

This Response is to the Consultation Paper on the Public Register for a national occupational licensing system circulated by the Council of Australian Governments (“COAG”) in March 2010.

Consumer protection

The justification for a Public Register is based on consumer protection. Consumer protection is also the essential justification for regulation of various occupations.

The Institute is committed to transparency and disclosure of relevant information to enable consumers to make informed decisions when evaluating and selecting a business to provide services. This is particularly the case with a transaction handled by a licensed/registered conveyancer that could involve a commercially unsophisticated, trusting and vulnerable consumer buying or selling their largest asset, their home.

Consequently, the Institute supports broad disclosure of information about licensees on the Public Register.

Whilst privacy considerations should not be dismissed, privacy is used in most instances to shield or conceal information that is an embarrassment or nuisance to disclose or facilitates a person being accountable for their actions.

Contents of the Public Register

Whilst the information to be disclosed in an application for an occupation licence has not yet been determined, the following submission is based on the assumption that an application for an occupation licence will reasonably require disclosure of information leading to the following proposals being adopted.

The Institute supports the provision of most of the information included within Proposals 1 and 2 plus Option 3.

In answer to the specific Questions:

Question 1: No. Further information is required as indicated below.

Question 2: Additional information is definitely required where issues of quality of work, serious potential harm, conflict of interest or honesty apply – which apply to conveyancers. That information should include –

- the information specified in Proposal 2 except that –
 - the full business address and full registered office should be provided, not merely the suburb; and
 - a prosecution that has not been successfully concluded should not be included in the details of the disciplinary actions;
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- the information specified in Option 3 except that –
 - in relation to managers and receivers whose appointment has been terminated owing to the business or licensee trading out of its financial difficulties; and
 - the date of the commencement or grant of the licence needs to be dealt with carefully. Where the ‘national’ licence categories and classifications are not identical with existing licence categories and classifications, the provision of a date of commencement or grant must indicate that it relates to the commencement or grant of the national licence and specify the former licence, jurisdiction and dates held;
- either the photo identification (being a good photograph taken in the 5 years preceding the application or renewal) or the date of birth of the licensee and each partner in the business. The rationale is that this information may be important to identify the person. It is the practice of some building traders to have the person doing the quoting to use the same name as the trader to make the service seem more personal and the quote seem more authoritative. Access to a recent photo or the date of birth will help to avoid this practice.

However, there is less justification for the date of birth of each directors and public officer of a corporation to be available on the Public Register. ASIC requires that information and occupational regulators in NSW and SA and perhaps other jurisdictions already collect it for some licensed occupations;

- former names in which the individual or corporation carried on business under the licence. The rationale is that some licensees change the trading name or set up a new corporation after their poor performance has been exposed and the inclusion of that information on the Public Register would assist consumers in evaluating that licensee. Failure to include such information would give an appearance of a clean bill of health to the licensee when the regulator knew or strongly suspected that the licensee’s performance was unsatisfactory – which is particularly relevant where the disciplinary process takes a protracted period; and
 - related current and former licences and qualifications. The rationale is that details of related current or former licences may be relevant to a consumer’s selection of a licensee: for example, the existence of a current or former licence to install swimming pools may assist a consumer seeking a licensee to build a house with an in-ground swimming pool and the existence of a valuer’s licence may assist a person seeking a licensee to sell a housing development. The details of disciplinary actions against a licensee in relation to a related or former licence may also assist a consumer seeking a licensee in a related area of work. Disciplinary action in relation to one licence will not necessarily result in disciplinary action in relation to another licence held by the same person: indeed, a Court imposing a disciplinary penalty may not even be aware of the other licence. For example, details of a suspension or disqualification of a land agent’s licence for trust account breaches may be relevant to a person seeking a conveyancer. Likewise, some licensees (particularly in the building trades) include in their quotes work for which they are not licensed to perform and then do the work themselves: the inclusion of details of enforceable undertakings on the Public Register may enable a consumer to avoid engaging an habitual offender to do work for which they are not licensed.
 - current licences held by close associates of the licensee. The term ‘close associates’ (or ‘associate of the licensee’) includes individuals or corporations that are related by common
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directors, common ownership or family relationships. The rationale is that many consumers seek independent contractors to perform some types of work or transactions and close associates may not be independent. For example:

- a vendor may not want to use an incorporated conveyancer to undertake the consequential conveyancing work if the conveyancer is owned by the real estate agent because the conveyancer should advise the vendor about the adequacy of the documentation prepared by the agent;
- a purchaser may not wish to use a mortgage broker recommended by the real estate agent who has negotiated the sale of the property if the mortgage broker is owned by the real estate agent or is a brother of the real estate agent because of concerns that the mortgage broker may be primarily concerned about ensuring the contract proceeds and/or may not maintain confidentiality or charge competitive fees;
- a person engaging an ancillary building services provider (eg survey work, engineering work, valuations, form work, etc) recommended by the builder who owns or is closely related to the provider of those services.

The potential for conflict of interest is great in such circumstances and recognised in some licensing legislation¹, as is the concept of close associates of the licensee². The disclosure of close associates which/who may be involved in related work should appear on the Public Register to enable the consumer to make informed decisions.

AIC is mindful of the issues around privacy and identity fraud. However, such information is largely if not completely in the public domain spread across various public registers. A person's residential address need not be disclosed on the Public Register unless the licensee carries on business from his/her residence – in which case the residential address is required because it will be the only address at which proceedings may be served. Of course, the residential address would need to be collected in any event for inclusion in the regulator's internal register.

The inclusion of claims admitted against the licensee (a requirement for some Victorian licensees) is unnecessary because disciplinary action should have been taken where the licensee committed culpable acts. Monitoring and evaluating insurance claims would be difficult and potentially prejudicial without indicating unsatisfactory performance.

The inclusion of details of outstanding returns is unnecessary because the regulator should promptly initiate disciplinary action if the failure to lodge is a serious matter.

Where the related information appears elsewhere on the Public Register (for example, partners and related licences), that information should appear as an electronic link to the other part of the Public Register for easy access.

Accessing the Public Register

The Public Register should be accessible by the public on the internet. Most people have access

¹ For example, see the *Conveyancers Act 2006 (Vic)* sections 49-50, *Land and Business (Sale and Conveyancing) Act 1994 (SA)* section 30 and associated Regulations 17-19, *Conveyancers Licensing Act 2003 (NSW)* section 22 and associated Rules of Conduct and *Settlement Agents Act 1981 (WA)* section 46.

² For example, see the *Conveyancers Act 2006 (Vic)* section 6, *Conveyancers Act 1994 (SA)* section 3, and *Conveyancers Licensing Act 2003 (NSW)* section 91.

to the internet from their home, workplace or public library. Regulators maintain public offices for registration purposes and computer terminals should be available at those locations for public use.

It will be important to utilise 'intelligent' search software that–

- automatically starts searching as the letters are typed in;
- allows searches by trading names and shortened names, and
- searches by similar spelling and suggests spelling variants (eg McRae, MacRay and Magray).

As a service to consumers, the internet facility could also accommodate the facility to search for traders in a geographic area. This facility would spread awareness of the Public Register and encourage its use and uptake.

Accessing the Public Register should be free. The information about licensees is gathered and recorded as part of the licensing and regulation process for which Regulators already collect fees from the licensees. Hence, the information will already be stored on a system that is electronically accessible and maintained by the Regulators. The Public Register will not include information that is not required by the Regulators: consequently, there will be an insignificant cost in maintaining the Public Register above the costs already incurred in maintaining the internal register.

It is legitimate and appropriate for the Governments to sell their information in some circumstances. However, the justification for a Public Register is essentially consumer protection. Many consumers would not access the information if a fee were charged. Imposition of a fee would suggest that the creation of a Public Register of this nature was intended primarily to raise revenue and cynically gave lip service to consumer protection. However, it would be quite legitimate for a regulator to charge a fee to provide a copy or certified extracts of the Public Register.

The need for a consistent disclosure standard across all occupations and jurisdictions

It is inconceivable that consumers in one jurisdiction would have a greater or lesser need for information than consumers in other jurisdictions. Likewise, the information available about licensees on a Public Register for a national licensing system should be consistent.

However, it is accepted that the licensing cycle in some jurisdictions may mean that all required information may not have been collected or captured before the proposed operative date for implementation of the legislation. Hence, it would be better to initiate the national licensing system with incomplete information on the Public Register and move to populate the Public Register promptly in relation to individual licensees as the information becomes available.

Information for particular occupations across all jurisdictions

The Institute is not familiar with the licensing requirements and regulated activities of all occupational licensees. The contents of the Public Register in relation to licensed conveyancers should contain all of the information set out above. The same requirements should apply to all

other licensed occupations and licensees unless it is clearly demonstrable that the information would be of no interest to any person seeking the services provided by a holder of that particular occupational licence.

Information for different levels of licence holders

Some licences are subsidiary to others such that the licence may not entitle the holder to carry on a business under the licence except as an employee of or supervised by the holder of a higher level of licence – for example, a licensed real estate sales representative can only utilise his/her licence if employed by a licensed real estate agent.

The nature of a subsidiary licence may mean that some types of information cannot apply to that licence. For example, it would be impossible for a person who must be employed by a higher level of licence in order to utilise his/her licence to have a partner or be a corporation. In addition, the holder of the higher licence is legally responsible for the authorised actions of a subsidiary licensee in their employment. Hence, the name of the employer/higher licensee should appear on the Public Register in relation to a subsidiary licensee. However, it is inappropriate to include the categories of information that do not apply to a particular licence. However, an address for a subsidiary licensee will be required because proceedings may need to be served upon the subsidiary licensee where the authorised nature of their actions is in question.

Contact details

The Institute would be pleased to discuss any aspect of this submission.

For further information or discussion upon the comments in this Response or any other matters relating to national licensing, please contact:

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