The Real Estate Institute of New South Wales Limited

Submission in response to the *Better Business Reforms - Implementation Options Paper*

20 December 2018

To: Better Business Reforms Implementation
Regulatory Policy, BRD
Department of Finance, Services and Innovation

By E-mail: policy@finance.nsw.gov.au

Introduction

This Submission has been prepared by The Real Estate Institute of New South Wales Limited (**REINSW**) and is in response to the *Better Business Reforms – Implementation Options Paper* released by the Department of Finance, Services and Innovation (**Department**) in November 2018 (**Options Paper**).

REINSW is the largest professional association of real estate agents and other property professionals in New South Wales. REINSW seeks to promote the interests of its members and the property sector on property-related issues. In doing so, REINSW plays a substantial role in the formation of regulatory policy in New South Wales.

REINSW wishes to raise the following issues discussed in the Options Paper, using the same numbering as that used in the Options Paper:

1. Disclosure of Key Terms

The disclosure requirements contemplated under the Options Paper aim to protect the interests of consumers by requiring all suppliers of goods and services in New South Wales to take "reasonable" steps to ensure that a consumer is aware of the effect of any term or condition that may prejudice the consumer. In light of this, REINSW is of the view that the property services industry already has adequate disclosure requirements regarding terms that could substantially prejudice a consumer's interests and, therefore, believes that real estate agents should be exempt from complying with any additional disclosure obligations resulting from this consultation process.

(a) Existing Disclosure Requirements and Exemption for Agents

REINSW would like to draw to the Department's attention the fact that real estate agents must already comply with extensive legislative requirements on the disclosure of key terms. In addition, legislation requires agents to include in their agency agreements prescribed warnings and information statements, the sole purpose of which is to protect consumers' interests.

In fact, to guarantee consumer protection, section 55 was introduced into the *Property, Stock and Business Agents Act 2002* (NSW) (**PSBA Act**). This section relevantly states that a licensee is not entitled to any commission or expenses from a person in connection with services performed by the licensee unless such services are pursuant to a signed agency agreement that complies with any applicable requirements of the PSBA Act and regulations. Noting that an agency agreement must be in place, the prescribed terms and conditions which are to be included in an agency agreement safeguard the interests of consumers and attempt to mitigate any potential detriment they may experience as a result of the terms of the agency agreement.

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REINSW also wishes to draw attention to the following examples of disclosure and consumer protection required by agents under the *Property, Stock and Business Agents Regulation 2002* (NSW) (**PSBA Regulation**):

(i) **Clause 6 - Provision of financial and investment advice:**

A real estate agent who provides financial or investment advice in connection with the sale or purchase of land must provide the following warnings:

A. that the advice is general advice and that it has not taken into account the individual circumstances of the person;

B. in the case of advice provided in connection with the purchase of land, a warning that an intending purchaser should assess the suitability of any investment in the property in light of the purchaser's own needs and circumstances, and

C. information that discloses the existence and nature of any conflict of interest the agent may have in connection with the provision of the advice (for example, entitlement to commission or referral fees).

(ii) **Schedule 1:**

A. Clause 6 – An agent has an obligation to act in the client's best interests *at all times* unless it would be contrary to the PSBA Act or regulations or otherwise unlawful to do so.

B. Clause 11 – An agent must not accept an appointment to act, or continue to act, as an agent if doing so would place the agent's interests in conflict with the client's interests. Accordingly, an agent is required to disclose whether their appointment would put them in such a position of conflict.

(iii) **Schedule 8:**

A. Clause 1(1) – If the agency agreement is an exclusive agency agreement, the agreement must include the following statement: IMPORTANT: This is an exclusive agency agreement. This means you may have to pay the agent commission even if another agent (or you) sells the property or introduces a buyer who later buys the property.

B. Clause 1(2) – If the agency agreement is a sole agency agreement, the agreement must include the following statement: IMPORTANT: This is a sole agency agreement. This means you may have to pay the agent commission even if another agent sells the property or introduces a buyer who later buys the property.

C. Clause 2(1) – The agency agreement must include the following statement: WARNING: Have you signed an agency agreement for the sale of this property with another agent? If you have you may have to

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pay 2 commissions (if this agreement or the other agreement you have signed is a sole or exclusive agency agreement).

D. Clause 3(1) – If the agency agreement includes a term that a commission is payable even if the sale of the property is not completed, the agency agreement must include the following statement: WARNING: The term immediately above provides that a commission is payable under this agreement even if the sale of the property is not completed.

In fact, the balance of terms in Schedule 8 as well as the provisions of Schedules 7-14 to the PSBA Regulation comprise of terms that must be included in agency agreements, and any non-compliance will result in agents not being entitled to commissions or expenses. This massive consequence ensures compliant agency agreements are used to protect consumers.

Of no less importance are Schedules 1-6 (inclusive) of the PSBA Regulation. These schedules set out rules which agents must adhere to, most of which must be incorporated into agency agreements to ensure compliance and receipt of commissions and reimbursement of expenses. By way of example and without the intention of being an exhaustive list, the rules require a buyer's agent to prepare and give to their client a statement of property details at the time of entering into an agency agreement. Additionally, agents must also not act on a sale without having conducted a physical inspection of the property. They must also, as soon as practicable after entering into an agency agreement in respect of the management of property, give the owner an inspection report for the property. Best practice warrants the inclusion in agency agreements of these statements and reports to ensure compliance and consumer protection. Any non-compliance will result in agents not being entitled to commissions or expenses, a significant penalty which agents avoid at all costs.

Further to this, and under section 49 of the PSBA Act, a real estate agent faces a penalty of 200 penalty units or 2 years imprisonment, or both, if they obtain or be in any way concerned in obtaining a beneficial interest in a property to which they are appointed to sell. The point here is that even if the agency agreement fails to include a prohibition to this effect, consumers suffer no prejudice or detriment as they are protected at law.

The *Strata Schemes Management Act 2015* (NSW) (**Strata Act**) also promotes consumer protection and minimises the possibility for consumers to be prejudiced by contractual provisions. The relevant sections evidencing this include:

(i) Section 50 – as another layer of protection for owners corporations, a strata managing agent can only be appointed for, relevantly, a term of 3 years and cannot roll over on a monthly basis. This duration is significantly less than the 10-year term for building managers, as permitted by section 68. Importantly, if consumers are not satisfied with their strata managing agent or the provisions of their agency agreement then, unless terminated earlier, the agreement will expire in 3 years - which is not a long time at all.

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(ii) Section 72 – with respect to an agreement for the appointment of a strata managing agent or building manager, on application by an owners corporation for a strata scheme, NCAT may make an order either terminating the agreement, varying or declaring void a term of the agreement, ordering compensation to be paid to a party or ordering that a party take or not take any action under the agreement. This power for NCAT to make such orders provides further protection from any potential prejudicial term in these types of agreements.

(iii) Part 12 – this Part sets out the processes and procedures for disputes and the powers of NCAT, including orders it can make, in such circumstances. Disputes between owners corporations and strata managing agents are heavily regulated by the Strata Act, giving consumers adequate and sufficient protection from any adverse contractual provisions in a low cost environment.

REINSW would also like to point out that part of an agent's practice is to comply with further disclosures required by other laws, outside of the PSBA Act and PSBA Regulation. These disclosures further protect the consumer and are another reason why agents should be exempt from additional disclosure requirements contemplated by the Options Paper. These relate to:

(i) work, health and safety, such as a disclosure of whether the premises are without risk to work, health and safety;

(ii) smoke alarm requirements and disclosing whether the premises complies with the *Environmental Planning and Assessment Amendment (Smoke Alarms) Regulation 2006*;

(iii) the disclosure by agents of material facts under the *Residential Tenancies Act 2010* (NSW) (**RTA Act**) and the *Residential Tenancies Regulation 2010* (NSW) (**RTA Regulation**), for instance, whether the premises has been subject to a serious violent crime, subject to flooding or bush fire or whether the premises is listed on the Loose-Fill Asbestos Insulation Register (as defined by clause 3(1) of the RTA Regulation); and

(iv) privacy and the use by an agent of a client's personal information pursuant to the *Privacy Act 1988* and an agent's disclosure of its intended collection and use. This includes using such information for marketing purposes, sending information overseas and generally holding, collecting, disclosing and using personal information in accordance with the Australian Privacy Principles.

Another pertinent reason why the property services industry should be exempt from complying with any additional disclosure requirements arising out of the Options Paper is because consumers are aptly protected by section 59 of the PSBA Act. This section allows for the rescission of agency agreements within a cooling-off period. This cooling-off period gives the consumer time to process and reflect on the terms of the agreement, as well as giving them an opportunity to seek

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independent advice should they choose to do so. This further safeguards the interests of consumers and adequately protects them from any potentially prejudicial terms and conditions in the agency agreement. On that basis and to support REINSW's position, clause 7(1) of Schedule 8 to the PSBA Regulation requires the following warning to be included in all sales agency agreements:

COOLING-OFF PERIOD: You (the vendor) have a cooling-off period for this agreement. If you do not wish to continue with this agreement you can cancel it until 5 pm on the next business day or Saturday.

Even despite the cooling-off period, it should be noted that it is prudent and common-sense for consumers to read an agreement before signing it, allowing them to query any term prior to signing. This common-sense approach safeguards consumers from accepting any key terms that they do not understand or may be prejudicial to their needs and interests.

(b) Regulations Issued Prior to Commencement of Reforms

Despite REINSW's position that real estate agents should be exempt from any further requirements to disclose key terms, REINSW strongly encourages the Department to release any regulations for consultation prior to the commencement of the reforms. Surprisingly, the Options Paper fails to include an exhaustive list of terms considered to be substantially prejudicial to consumers, what constitutes adequate disclosure and which industries will be exempt. Goods and service providers need to know these requirements before being statutorily obliged to comply with them. To introduce the regulations after the reforms commence is to set goods and service providers up for failure. As the saying goes, "the devil is in the detail" and considering the significant affect such changes will have on any sort of contractual arrangement, goods and service providers cannot adequately prepare or educate themselves if the regulations are to provide further detail about the disclosure requirements.

Further, the introduction of the regulation prior to the commencement of the changes will ensure that sufficient community consultation is sought and appropriately considered, resulting in deliberated changes which reflect stakeholder requirements. Bearing in mind what needs to be done prior to the commencement of the reforms as set out in section 1.6 of the Options Paper, REINSW is of the view that it makes sense for the regulations to be made before the reforms are in force.

Until the regulations are made public, goods and service providers will be left with many unanswered questions. For instance, to what extent are these disclosures required? Is it enough that a consumer signs an agreement in which the disclosures and potentially prejudicial terms are clearly set out or is something more necessary for compliance?

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(c) Consistent Commencement Dates

REINSW is not opposed to the commencement date of 1 September 2019 provided that the regulations are passed before that date and that it allows sufficient time to ensure adequate consultation and education is carried out.

However, having said that, REINSW strongly urges the Department to reconsider the commencement dates of *all* changes contemplated in the Options Paper so that there is consistency and uniformity throughout. Streamlining the changes will help with implementation and compliance. Whilst REINSW appreciates that each change will require different mechanisms and processes to be put in place prior to their commencement, it can be daunting for consumers and businesses, regardless of their industry, when a plethora of changes are being introduced, all at different stages over the next 18-24 months. Accordingly, and to make it easier for those affected to educate themselves appropriately and to implement new procedures, REINSW encourages the Department to decide on one suitable commencement date for all reforms, which will streamline the commencement processes for each of the reforms to ensure a smooth transition.

2. Disclosure of Commissions and Referral Fees

The Options Paper states that the purpose of these changes is to fill the "*clear regulatory gaps in the current legislative framework*". REINSW is of the opinion that there are no such gaps in the property services industry on the basis that it is already adequately and sufficiently legislated, particularly with respect to the disclosure of commissions and referral fees. Hence, the property services industry should be exempt from the requirement to comply with any additional disclosure obligations arising out of the Options Paper.

(a) Existing Disclosure Requirements and Exemption for Agents

REINSW would be extremely surprised and disappointed if the Department were not familiar with, or were unaware of, the existing onerous and strict disclosure obligations imposed on real estate agents by statute. Without intending to be an exhaustive list, REINSW wishes to highlight the following disclosure obligations that agents must comply with on a daily basis as part of their agency practice:

(i) **PSBA Act**

A. Section 47 – a buyer's or seller's agent must disclose a number of things to their client and any prospective buyer of land, including any relationship that the agent has with anyone to whom the agent refers the client, whether the agent derives or expects to derive any consideration from such a referral (monetary or otherwise) and the amount, value or nature of any benefit to which the agent receives or expects to receive in connection with the provision of its services.

B. Section 55 – as discussed above, an agent is not entitled to a commission or expenses unless, relevantly, a compliant agency agreement is in place.

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Such agency agreement must comply with applicable requirements of the PSBA Act and PSBA Regulation which includes prescribed disclosures relating to commissions and referral fees. These are discussed in more detail below.

C. Section 57 – a licensee is not entitled to any expenses from a person for or in connection with services performed by the licensee in the capacity of licensee unless the agency agreement contains a statement identifying the source of all rebates, discounts or commissions that the licensee will or may receive and specifies the reasonably estimated amount of such rebates, discounts or commissions.

(ii) **PSBA Regulation**

Clause 7 of the PSBA Regulation provides that the rules of conduct are prescribed by the regulation (as set out in its schedules) and must be observed in the course of carrying on business or the exercise of functions under a licence or certificate of registration. Again, without intending to be an exhaustive list, REINSW wishes to highlight the following already existing disclosure requirements in the rules of conduct:

A. Schedule 1 (rules applicable to all registered persons and licensees) – as mentioned above, by virtue of clause 11, an agent must not act or continue to act for a person if to do so would place their interests in conflict with those of their client's. Accordingly, an agent is required to disclose any commissions or referral fees that they receive if, without such disclosure, they would be placed in a position of conflict. In addition, clause 12 specifically deals with referrals to a service provider. It requires an agent who refers a person to a service provider not to falsely represent to the person that the service provider is independent of the agent. A service provider is only considered as independent if the agent does not receive a rebate, discount, commission or benefit and if the agent does not have a personal or commercial relationship with the provider. Accordingly, if the service provider is not independent of the agent, the agent must disclose to the person the nature of any relationship, whether personal or commercial and the nature and value of any rebate, discount, commission or benefit.

B. Schedule 2 (rules specific to real estate agents, real estate salespersons and on-site residential property managers) – pursuant to clause 7, an agent must not demand or accept a fee or other valuable consideration for referring the person on behalf of whom the agent is acting on the sale to a buyer's agent.

C. Schedule 4 (rules specific to business agents and registered persons they employ) – clause 6 states that an agent must not demand or accept a fee or other valuable consideration for referring the vendor to a buyer's agent.

D. Schedule 5 (rules specifically applicable to buyers' agents) – clause 6 specifies that an agent must not demand or accept a fee or other valuable

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consideration for referring the person on behalf of whom the agent is acting as buyer's agent to a selling agent.

E. Schedule 7 (terms that must be included in all agency agreements) – there are strict remuneration and reimbursement requirements for agency agreements. For example, pursuant to clause 8, the agreement must include a term that any sum or reimbursement for expenses or charges cannot be varied except with the agreement (in writing) of the person whom the agent is acting for. Another example is found in clause 9 whereby an agency agreement must include a term specifying the circumstances in which the licensee is entitled to remuneration (by way of commission or otherwise) for services performed under the agreement, the amount of the remuneration or the way in which it is to be calculated, and when the remuneration is payable.

(iii) **Strata Act**

A. Section 60 – a strata managing agent must report at the annual general meeting of the owners corporation whether any commissions or training services have been provided to or paid for the agent during the preceding 12 months and particulars of any such commissions or training services, as well as, with respect to the following 12 months, any commissions or training services and their estimated amount or value that the agent believes are likely to be provided to or paid for the agent.

In addition to the above statutory disclosure requirements, agents are also required to comply with various provisions in the *Crimes Act 1900*, Australian Consumer Law and their fiduciary obligations at general law (noting that clause 2 of Schedule 1 to the PSBA Regulation provides extra protection to consumers by legislating that agents must comply with their fiduciary obligations).

Consequently, REINSW submits that the regulations contemplated in the Options Paper should exempt real estate agents from complying with any new disclosure regime on the basis that the above provisions already heavily regulate the disclosures of commissions and referral fees in real estate transactions. To reiterate, REINSW does not see a need to create further legislation for real estate agents that has the potential to be conflicting with the provisions that they are already required to comply with, if not married up. This then poses the question as to whether these changes will be included in the PSBA Act and PSBA Regulation or whether such disclosure requirements will appear in a separate piece of legislation? If for some reason agents are not exempted, REINSW suggests that the former approach be adopted to avoid any potential confusion and ambiguity.

(b) Regulations Issued Prior to Commencement of Reforms

REINSW submits that the legislative changes should not commence until the regulation has been passed. Having regard to REINSW's position above (set out in section 1(b) of this Submission), the release of the regulation prior to the commencement of the proposed changes will ensure sufficient community consultation is sought and considered as well as leaving "no stone unturned" in the

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sense that all queries and concerns will be adequately addressed and dealt with prior to the implementation of the changes. This will produce a better result where those affected by the changes will have a complete picture, knowing exactly what those changes are and how they will be so affected.

(c) Consistent Commencement Dates

REINSW is not opposed to the commencement date of 1 January 2020. However, as mentioned in section 1(c) of this Submission, REINSW urges the Department to choose one suitable commencement date for all reforms to ensure consistency and ease of implementation.

3. Streamlining the Uncollected Goods Regime

(a) Existing Requirements and Exemption for Agents

Whilst REINSW appreciates the aim to streamline and harmonise the various uncollected goods provisions in different pieces of legislation, REINSW is puzzled by the proposal for real estate agents to deal with uncollected goods in a completely different way to what is required by current legislation, and in the same way as industries that are completely different to the property services industry. REINSW believes that streamlining the requirements for all industries is not practical and insists that it is not the appropriate way to deal with uncollected goods in the residential tenancy and strata space. Therefore, REINSW proposes that agents be exempt from the requirement to comply with schedule 3 to the *Fair Trading Legislation Amendment (Miscellaneous) Act 2018* (NSW) (**FT Miscellaneous Act**) on the basis that compliance with Part 6, Division 2 of the RTA Act is a far more practical and workable solution to the issue of uncollected goods. Accordingly, agents should be exempt from complying with the proposed reforms in the FT Miscellaneous Act on this issue.

The concept of thresholds for the value of uncollected goods does not apply nor appear in the RTA Act and is not applicable to agents. The current system is not broken and, in fact, works very well. Agents are aware of their obligations and the processes relating to uncollected goods. To require them to comply with a new regime will create an unnecessary disruption and confusion in a market where the current process is smooth and efficient. Hence, REINSW is opposed to agents being part of the streamlining process and insists that they be exempt.

REINSW has some concerns with the proposed changes regarding the "missing pieces of the puzzle". To begin, in the proposed new laws on this issue there appears to be no contemplation of potential compensation that can be claimed by the landlord from the tenant – such as an occupation fee if the abandoned goods prevent the re-letting of a rental property. Under the current scheme, an agent is able to dispose of any uncollected goods if the value of the items is less than the cost of removal and storage. On the other hand, if the value of the items is greater than the cost of removal and storage, the agent can recover that cost in the form of an occupation fee. REINSW is not sure why the proposed reforms are silent on the occupation fee but recommends that the legislation permit one to be charged

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if it would mean that landlords are not unfairly out of pocket by the removal of goods that were uncollected due to no fault of their own.

In situations such as these, it becomes cost effective to move any abandoned goods immediately into storage to allow the premises to be re-let. Whilst each of the three new monetary thresholds for the value of goods allow the receiver to move or store uncollected goods in an appropriate manner, the time for keeping the goods before disposing of them has been significantly extended which unfairly results in the landlord being even more out of pocket.

REINSW wishes to note that under the current system, thresholds for the value of uncollected goods do not exist. It is not practical to impose such thresholds because the process for the removal and subsequent disposal of goods is subjective with the ability for agents to seek an order from NCAT if unsure of how to proceed (regardless of the value of the goods). In such situations, NCAT directs agents on how to best deal with the uncollected items. Agents cannot be required to comply with a streamlined approach applicable to various industries considering the important role in which NCAT plays when dealing with uncollected goods in the residential tenancy and strata space.

Whilst schedule 3 to the FT Miscellaneous Act contemplates NCAT will be involved in the uncollected goods regime, an application to NCAT may only be made in situations where the goods are of “high value”, and not any value as the process currently stands. This understanding is further substantiated by the table found on page 14 of the Options Paper. This becomes problematic in scenarios where a landlord, property manager or strata manager is unaware of the value of certain items and may, regardless of their value, need the guidance of NCAT when dealing with and disposing of them. If the Department’s intention is not to remove entitlements to apply to NCAT, REINSW recommends that the proposed legislation be clarified so that an order can be sought from NCAT for any value of goods, and not just in situations where a good is of high value or where a dispute arises. If, however, the Department’s intention is to remove entitlements to apply to NCAT then REINSW is opposed and envisages major problems with the new legislation, including an increase in disputes referred to NCAT over the value of goods just so that parties can be guided by NCAT on how to deal with and dispose of them. Unfortunately, this will result in the unwanted increase in NCAT’s resources and time devoted to this area.

REINSW has sought clarification from NSW Fair Trading with regards to the “value” of the uncollected goods. The value of the items must be realisable – that is, it would prove to be inefficient if the “value” of the goods meant the value of the items as brand new. Unfortunately, the response received by REINSW from NSW Fair Trading leaves many questions unanswered. It remains unclear to REINSW, with the proposed introduction of thresholds, whether each item is to be considered individually to obtain a final collective value or whether items are to be treated individually in all cases. In addition, when assessing the value of the goods, is it to be the current value in a second-hand market, or is the value intended to reflect the cost of replacing the items as though they were brand new? For the new uncollected goods regime to be effective, REINSW recommends that the processes must be clear and concise, answering the questions posed above.

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REINSW would also like to see the legislation specifically state that the goods will pass with clear title following their disposal. There appears to be no mention of this in Schedule 3 to the FT Miscellaneous Act. In addition, REINSW insists that the legislation make it clear that, once disposal of goods occurs, the owner of such goods cannot claim compensation for its disposal. This is the current process which is why the ability to obtain an order from NCAT, regardless of the goods' value, is imperative in the process.

If the process is streamlined, despite REINSW's resistance to the idea, REINSW wishes to recommend the introduction of a portal or website whereby uncollected goods can be listed. Rather than listing in a newspaper, a centralised database that can be accessed by anyone will streamline the sale and collection process of abandoned goods. This process may also assist landlords, property managers and strata managers in their attempts to sell the goods and may be able to increase interest in the items during the time in which they are listed on the portal. REINSW would like to take this opportunity to offer its assistance in developing such a database.

Finally, with regards to vehicles left on common property, REINSW is concerned that the proposed changes fail to deal with these situations. Although the FT Miscellaneous Act requires that a person obtain a written search result (within the meaning of section 174 of the *Personal Property Securities Act 2009* (Cth)) in relation to the vehicle to ensure that it is not stolen before selling it, this is inadequate to deal with the shortcomings of the current legislation relating to this area. Unregistered vehicles are often left behind in car spots or on common property which has become increasingly difficult to deal with – the police often do not intervene, leaving it as a matter for the local council and it is almost impossible to locate an owner of an unregistered car. Strata managers and property managers are then faced with potentially serious consequences if they arrange for the vehicle to be towed (for instance, theft). REINSW insists that the reforms be amended to address this frustrating and common issue that affects not only agents but also residents and visitors in a strata scheme.

(b) Regulations Issued Prior to Commencement of Reforms

Once again, and in agreeance with the Options Paper, it is preferable that the regulation be introduced prior to the implementation of the legislative changes. Considering the extent to which uncollected goods affect numerous industries, the Department must be adequately satisfied that it has considered consultation responses and resolved all issues in connection with the new legislation and its implementation so that the changes are suitable to each of the industries they seek to impact.

(c) Consistent Commencement Dates

REINSW is not opposed to the preferred commencement date of 1 October 2019. However, and as mentioned throughout this Submission, all attempts should be made by the Department to align the commencement dates of the various reforms in the FT Miscellaneous Act.

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4. Utilities supply agreements in Strata

As these reforms are within the same realm of changes discussed under the *Easy and Transparent Trading – Empowering Consumers and Small Business – Consultation Paper*, REINSW wishes to reiterate that, in principle, it does not oppose the proposed legislative changes to allow residents in strata schemes to have more freedom when choosing their own utility providers.

As there is no need for the introduction of a regulation making power, REINSW does not oppose the proposed commencement date of 1 July 2019, subject to the continued comments made throughout this Submission regarding the harmonisation and consistency of reform commencement dates.

6. Landlord and Tenant Act 1899

REINSW has and will continue to support the repeal of the *Landlord and Tenant Act 1899*. Accordingly, REINSW encourages the Department to bring forward the repeal date given the minimal number of those affected. As savings provisions will be introduced to maintain the operation of the substantive provisions, REINSW sees no reason as to why the repeal cannot take place at an earlier date. In saying this, the regulation should be passed as soon as possible so that a proclamation date can be set – bearing in mind REINSW's continued suggestion that commencement dates for changes contemplated in the Options Paper and the FT Miscellaneous Act should be aligned.

Additional Comments – Amendments to the *Residential Tenancies Act 2010*

With reference to Schedule 1 to the FT Miscellaneous Act, REINSW wishes to ask why the rental bond roll-over scheme was not included in the Options Paper for consultation. REINSW, in principle, does not support the implementation of such a scheme. Further, without knowing the contents of the regulation, REINSW has a myriad of questions that remain unanswered by the Department, including (without limitation):

1. How will the scheme work?
2. Surely participants of the scheme will need to consent to the transfer of the bond. How will this consent be obtained?
3. The bond cannot be transferred before the tenant vacates. When will the bond transfer take place?
4. How will a bond under a previous tenancy be applied to a new tenancy?
5. What protection mechanism will be put in place for incoming and outgoing landlords in the transition process?

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6. What is the eligibility to participate in the scheme?
7. Will there be a bond guarantor or insurance bond?
8. What triggers an insurance claim?
9. What is a deposited rental bond?
10. What are the circumstances in which a deposited rental bond may be treated as the rental bond for another tenancy?
11. What are the applicable fees?
12. What are the time periods within which actions must be completed in relation to the payment of bonds and the consequences of failure to complete those actions on time?
13. What are the remedies for contraventions of the scheme?

REINSW has been advised by NSW Fair Trading that the mechanics of the scheme is not yet known by Government and that interested stakeholders will be invited to contribute to its development. NSW Fair Trading further advised that the supporting regulations are yet to be developed and that the scheme will result in changes to the rental bond system, likely to be operational in late 2019 at the earliest. REINSW strongly recommends that the changes to the RTA Act, as contemplated by the FT Miscellaneous Act, do not take place until proper and considered community consultation is carried out in order to resolve the many outstanding issues that currently exist with this particular reform.

Conclusion

Although REINSW appreciates and welcomes attempts to increase consumer protection, REINSW wishes to emphasise that attention should be directed towards those industries that are not properly regulated or governed by legislation. In other words, REINSW is of the view that the property services industry should be exempt from additional disclosure requirements when the current scheme adequately protects consumers and already prohibits unconscionable dealings and transactions that may prejudice the interests of the consumer.

Overall, and to reiterate the points made throughout this Submission, REINSW strongly encourages the Department to streamline the proposed changes by ensuring that commencement dates are harmonised, proper and considered consultation takes place and that legislative changes are not introduced without absolute transparency of regulation making powers. As noted in the Options Paper, some of the reforms require further consultation to ensure stakeholders have the opportunity to provide input into the details of the reform before they are implemented. In light of this, to implement legislative changes prior to the creation of the relevant regulations that support the legislation would go against the very principles that the Options Paper aims to promote.

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Nonetheless, REINSW appreciates the opportunity to provide this Submission and would be pleased to discuss it further, if required.

Yours faithfully

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