

16 June 2022

Ms Amy Stiles  
Managing Lawyer (Policy & Legislation)  
Office of the Registrar General  
Department of Customer Service



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Dear Ms Stiles,

### **Submission – Review of the *Conveyancing (Sale of Land) Regulation 2017 (NSW)***

The Real Estate Institute of New South Wales Limited (**REINSW**) understands that Government is currently reviewing the *Conveyancing (Sale of Land) Regulation 2017 (NSW) (Regulation)* and would like to take this opportunity to provide some comments which we hope will be of assistance in this process. In particular, we request Government consider including a provision in the Regulation requiring mandatory disclosure by the vendor to the purchaser of any material facts which may affect a property, including whether the property is listed on the New South Wales Loose-fill Asbestos Register (**Asbestos Register**). REINSW also recommends that such disclosures be annexed to the contract for sale to ensure the purchaser is clearly aware of this information before signing it.

Although real estate agents are obliged to disclose to purchasers material facts about a property (including pursuant to a non-exhaustive list set out in clause 54 of the *Property and Stock Agents Regulation 2014 (NSW) (PSA Regulation)*), a vendor has no such obligation under section 52 of the *Property and Stock Agents Act 2002 (NSW) (PSA Act)*. REINSW is of the view that the lack of disclosure obligations incumbent on the vendor creates the following issues:

1. The purpose for disclosing material facts is primarily to protect consumers and to ensure that they are adequately informed of relevant information which may impact their decision to enter into a contract for sale. This is important because a property transaction is likely to be one of the most significant financial decisions that a person makes throughout their lifetime. While purchasers should conduct their own due diligence, sometimes important enquiries can be omitted. Other information may be of a nature which is not readily available through a search or public register. It could be a latent or patent defect or safety issue unique to the property which is not apparent from an inspection, or it could involve information about a previous crime committed at the property. For example, REINSW is aware of one agent who exchanged a property in a strata complex and who was not informed by a vendor of an Emergency Annual General Meeting called to determine a special levy. The agent only found out about it because their agency managed another property in that complex and had received for that particular landlord a notice of the meeting. Imposing a mandatory obligation on the vendor to disclose information of this nature helps purchasers make better informed decisions about whether a property is right for them, when making this large financial investment decision.
2. There is no requirement for a vendor to inform an agent of a material fact, which impedes upon the agent's ability to fully comply with their obligations under section 52 of the PSA Act. In fact, there is actually an incentive for a vendor not to inform the agent of information of this nature as doing so will generally adversely impact the property's value. Not only does this undermine the consumer protection objectives mentioned above, but where a vendor fails to disclose a material fact to an agent, the agent might be at risk of liability under section 52(1)(b) of the PSA Act where they "ought reasonably to [have] know[n]" about it.
3. The current lack of disclosure obligations on the vendor creates a conflict-of-interest between agent's obligations to the vendor and purchaser. It requires the agent to act in their client's best interests while also disclosing to the purchaser material facts. This creates tension between the agent and their client which could be removed where both the vendor and agent were under the same obligation to disclose this information to the purchaser.

REINSW's view is that these issues could be resolved in the Regulation as a mandatory disclosure obligation requiring the vendor to inform purchasers of any material facts affecting the property.

For consumer protection purposes and similar reasons stated in paragraphs 1-3 above, REINSW also recommends that vendors disclose if their property is listed on the Asbestos Register. Although this would also fall within the scope of a "material fact" (should Government agree with REINSW's recommendations on this matter) and there is already a prescribed warning in Item 16 of Schedule 1 to the current Regulation recommending the purchaser search the Asbestos Register and contact their local government about any record of loose-fill asbestos in the property, given the significant health and safety impacts of this material, REINSW's view is that there should also be a specific duty for vendors to disclose this information in the contract for sale if they know the property is on the Asbestos Register.

REINSW recommends that these mandatory disclosures should be included as prescribed warranties in the contract for sale, akin to the warranties in the contract in Part 1 of Schedule 3 to the current Regulation.

For the reasons given in this submission, REINSW would be grateful if Government would consider amending the Regulation on the above basis as we believe it would assist all.

We thank you for your consideration of our submission, we are available to discuss our submission if you wish. Otherwise, we look forward to receipt of your response.

Yours faithfully



Tim McKibbin  
**Chief Executive Officer**