

11 May 2007

Consumer Policy Inquiry
Productivity Commission
PO Box 80
Belconnen ACT 2616

Dear Productivity Commission

The Real Estate Institute of Australia (REIA) appreciates the opportunity to tender a submission in response to the Productivity Commission's Issues Paper on the *Review of Australia's Consumer Policy Framework*.

I would welcome the opportunity to discuss the submission.

Yours sincerely

Bryan Stevens
Chief Executive Officer
Real Estate Institute of Australia

Enclosure:

1. REIA Submission on Review of Australia's Consumer Policy Framework dated 11 May 2007.



Real Estate Institute of Australia

REIA SUBMISSION TO THE PRODUCTIVITY COMMISSION REVIEW OF AUSTRALIA'S CONSUMER PROTECTION FRAMEWORK

BACKGROUND

1. On 11 December 2006, the Commonwealth Treasurer, the Hon. Peter Costello MP, requested that the Productivity Commission undertake an Inquiry into Australia's Consumer Policy Framework, including its administration, and report within 12 months. The Productivity Commission published an issues paper in February 2007 and called for responses by 11 May 2007.

2. The Real Estate Institute of Australia (REIA) is the peak national professional association for the real estate industry in Australia. The REIA has eight members, comprised of the State and Territory Real Estate Institutes, through which about 80% of real estate agencies are collectively represented. There are 8,184 real estate agencies around Australia. The real estate sector is dominated by small businesses with 73% of agencies employing less than 10 people.

PURPOSE

3. The REIA's submission constitutes a response to the Productivity Commission's issues paper on Australia's Consumer Policy Framework.

ISSUES

4. The REIA welcomes the Productivity Commission Inquiry into Australia's Consumer Policy Framework.

5. For most consumers, purchasing a property represents a large, infrequent transaction which can be particularly daunting the first time around. For many, buying a first home will be the most important purchase of their lives. According to the 2001 Census, 67% of Australians own their own home while about 28% of the population rent property. ABS figures indicate that around 17.7% of home buyers were financing a loan for a first home purchase as at December 2006. Businesses too require premises from which to operate and will usually purchase or lease a property.

6. Due to the risk and complexity associated with purchasing, or even renting a property, most property transactions involve a qualified real estate agent acting for one of the parties, usually the property owner. While real estate agencies are in fact businesses, they are also consumers in their own right, purchasing everything from office stationery, vehicles, phones, computers, clothing and advertising. An appropriate consumer protection environment is essential for the efficient operation of the real estate industry.

The Importance of Consumer Protection

7. The REIA recognises that well targeted consumer protection regulation works to the benefit of consumers, businesses and the national economy. Competition and consumer protection are inextricably linked.
8. Improvements in the regulation of domestic markets have led to greater competition between businesses within Australia, in turn leading to a greater range of goods and services being offered to consumers, usually at lower prices. Regulation may also benefit businesses in that it can create boundaries within which businesses may operate with a level of clarity and certainty.
9. When consumers are informed and empowered they are more likely to participate in markets, leading to increased demand for the goods and services being offered by Australian businesses. However, there is a balance to be achieved. Consumers must ultimately accept some degree of responsibility for making their own decisions and it must be recognised that the unnecessary regulation of markets adds cost to doing business, leading to economic inefficiencies that can result in potentially fewer businesses willing to operate, higher prices and less choice for consumers.
10. Clearly, an appropriate balance must be struck between empowering and protecting consumers while maintaining a competitive business environment. This balance will be different depending upon the specific consumer issues that need to be addressed, the level of harm that may occur in the absence of regulation, the information available to participants in the marketplace and the cost of regulation. While advances in behavioural economics may aid the development and implementation of successful consumer policy in some areas, it is already clear that consumers are not always predictable in all situations and do not always act in their own best interests. Policy makers must therefore be careful to ensure that an objective approach is employed wherever possible rather than relying on a speculative behavioural analysis that may or may not hold true in particular circumstances, and ensure that consumer protection policy is not designed to completely remove the notion of “caveat emptor”.

The Current Regulatory Environment

11. In Australia, consumer protection is a shared responsibility of the Australian Government and the State and Territory Governments. The Commonwealth *Trade Practices Act 1974* (TPA) forms the basis of consumer protection in Australia, the provisions of which are also reflected in State and Territory fair trading Acts (FTA). Other important Commonwealth legislation such as the Financial Services Reform Act, *Privacy Act 1988* and the *Corporations Act 2001* also apply nationally.
12. In addition to overarching legislation, the sale of real estate is subject to specific regulation at the State and Territory, and even local government level, in areas such as:

- a. property titling and transfer of title;
- b. tenancy laws (including tribunals);
- c. building compliance;
- d. planning / zoning; and
- e. professional real estate qualifications and standards of practice.

13. In all, there are nine jurisdictions, not including local governments, regulating within the property sector. At the State level, real estate practice is highly regulated.

14. On the whole, the current regulatory framework is essentially a reflection of an incremental response by Governments to consumer issues that have previously arisen or that have been foreseen – underpinned by a broad principle of fairness. On this basis, it may be argued that the current piecemeal consumer protection framework is adequate and functioning reasonably well. However, it is also true that the existing system would probably not be the system of choice if a completely new system was to be introduced in the contemporary environment with regard to inter-jurisdictional consistency, technological advancements, consumer awareness and minimising business red tape.

The Case for Change

15. Australia's domestic markets for goods, services and labour now operate in a national or international context. As the internal boundaries on the Australian business map are eroded through improvements in communications and transport technology, both businesses and consumers are increasingly operating across multiple regulatory jurisdictions. For instance, advances in communications technology, such as the advent of internet sites offering properties for sale, have enabled consumers from across Australia and overseas to more readily consider purchasing property outside of their own regulatory jurisdiction.

16. Australians are also increasingly mobile and prepared to move for work or lifestyle reasons. According to the ABS, 358,800 Australians migrated interstate during 2004-05. The vast majority of these persons will have been required to either purchase or rent a property within their destination State or Territory, in which they are unlikely to be entirely familiar with the local consumer protection framework. Some are also likely to have sold or let their previous property prior to, or shortly after, moving.

17. Despite the erosion of boundaries on the business map, boundaries within the consumer protection framework persist and there are now numerous specific examples of consumer protection regulation that are inadequate, inconsistent, absent or overlapping. Real estate specific examples of each of these areas are examined in the sections to follow.

18. In essence, the current consumer protection framework has become unnecessarily complicated and does not always reflect the reality of the Australian business and consumer environment. The REIA contends that Australia's consumer protection framework could, and should, be improved for the benefit of consumers and businesses alike.

SPECIFIC AREAS OF CONCERN TO THE REAL ESTATE INDUSTRY

Inconsistent Regulation and Unnecessary Regulation

19. **Real Estate Licensing.** With nine jurisdictions legislating in the area of real estate practice, there are substantive differences between cross-jurisdictional regulatory requirements, compliance procedures and the treatment of persons/businesses found to be in breach of regulations. An overview of the legislative differences relating to real estate practice across the jurisdictions is provided at Attachment 1. This is exacerbated with a tenth jurisdiction including New Zealand.

20. While the REIA supports effective regulation and strong, accountable regulators acting transparently and consistently, the lack of consistency in legislation and regulations across the jurisdictions (and the regulatory spectrum) imposes a significant compliance burden, both in terms of cost and time, on all real estate businesses. For example, in a cross-border locality such as Queanbeyan/Canberra, Albury/Wodonga, or Gold Coast/Tweed Heads, real estate agents doing business in both jurisdictions are required to hold two separate licences, maintain two registered offices and have two separate trust accounts with no obvious benefits resulting for the consumer.

21. The patchwork of regulation affecting real estate stands in contrast to the direction of business and workplace reforms, advanced through the National Competition Policy and other mechanisms. Australian Governments should recognise that there are no longer economic boundaries on the domestic business map. In order to address this situation, a multi-government approach to identifying and removing unnecessary regulatory inconsistencies across the various jurisdictions is required.

22. While some progress may be forthcoming in the areas of training and licensing as a result of the recent cornerstone agreement by COAG on mutual recognition, there is much more to be done in all areas of regulation affecting business practices generally, and real estate business specifically.

23. Inconsistency in real estate regulation also highlights areas where unnecessary regulation has been imposed. There are many examples of potentially unnecessary government regulation contained within Attachment 1, for instance:

- a. there is a prescribed maximum commission rate in QLD whereas commission rates are deregulated in all other jurisdictions;
- b. business names must be published in advertising in all jurisdictions other than QLD and SA;
- c. business brokers must be specifically licensed in some jurisdictions and not others;
- d. property developer salespersons must be licensed in QLD only;
- e. buyers agents must hold a license in all jurisdictions except TAS, SA and WA;
- f. variations in limitations on sole and exclusive agency agreements;
- g. variations in fees which may be recovered from consumers; and
- h. differing cooling off periods ranging from none to 5 business days.

24. **Effective Mutual Recognition.** The Council of Australian Governments (COAG) is committed to implementing an effective system of mutual recognition, including for professional licensing and qualifications. A key to this process is consistent education however this has been excluded from the scope of work for the COAG Skills Taskforce. The real estate industry now has a national education package, however, the real estate professional licensing system in Australia is premised on fundamental differences including that there are different occupational categories across the States for real estate practice (see Attachment 1). For example, there are different categories and definitions for real estate agent and auctioneers with different education requirements which makes effective mutual recognition very difficult to achieve. Similarly, the use of restricted (specialist) licences in some jurisdictions, eg NSW and QLD, make application of mutual recognition difficult. The REIA supports a simplified licensing structure encompassing licensed agents and registered real estate representatives, but not including restricted licence categories.

25. SCOCA is reviewing the harmonisation of real estate education and training, albeit very slowly. The SCOCA process is now in its third year of review. Surprisingly, the issue was taken off the MCCA agenda last year and is no longer under MCCA consideration. COAG might consider that the policy development process is not supportive of their vision for the socio-economic development of Australia.

26. **Commission Rates.** National competition policy includes a coordinated and systematic set of measures aimed at encouraging greater competition across large parts of the economy. Features include dismantling of trade barriers, deregulation of the financial system, changes to labour market regulations and taxation reform. The competition policy reforms are predicated on improving the competitiveness and flexibility of the Australian economy in a way which also meets 'public interest' considerations.

27. However, commission rates to be charged by real estate agents have been deregulated in all States and Territories except QLD. The real benefit of fee deregulation is to give consumers a proper choice. Rather than having all consumers subject to the same charges as is inevitably the case under a statutory schedule, consumers would be able to decide on the level of service required by them for their individual needs. The government can best protect consumers by:

- a. ensuring that there is a competitive environment,
- b. directly providing and ensuring that the real estate industry also provides better consumer education and information,
- c. requiring statutory disclosure by agents of the services agents intend to provide and the price to be charged for those services, and
- d. ensuring that there is an efficient and independent mechanism available to determine the appropriateness of fees in particular circumstances.

28. The regulatory environment has done little to encourage real estate agents to look for more innovative ways of conducting their operations and it has reduced the incentive to provide new or better services. Regulators appear to be concerned that the cost of real estate agents services will rise. Agents on the other hand are concerned that they will reduce. The difficulty with those perceptions is that they are not attached to any performance measures and there is therefore no way to assess the validity of claim and counter claim. It must be expected that there will be some movement in price in relation to individual transaction – that is the desired outcome of establishing competitive markets.

29. The Commonwealth and State Governments are increasingly requiring industries to become more competitive and accountable for their performance. The Hilmer Report advocated that all industries and professions should be exposed to a more competitive environment. The real estate industry should be required to embrace competition reform in the same manner as other industries and professions in the overall interests of business and the consumer.

30. **Regulations Applicable to the Sale of Property.** Attachment 1 contains a summary of the cooling off periods applicable to property sales within the States and Territories during which a consumer may terminate an agreement to purchase a property with no penalty. There is significant variation in these periods which may be zero, two, three, four or five working days depending upon the specific jurisdiction in which the transaction has taken place.

31. A consumer residing in QLD, NSW or the ACT, in which the cooling off period is five days, may not be aware that a reduced cooling off period applies in other jurisdictions. As a result, it is possible that the consumer might delay any action to terminate a transaction taking place in another jurisdiction until the fifth day, only to discover that the cooling off period has expired. This can lead to unnecessary disputes between the vendor and the disgruntled consumer who may then attempt to find other means of terminating the transaction.

32. Applying this principle in reverse, a vendor may also find that a consumer is able to terminate a transaction at a later time than the vendor thought possible. The vendor may find themselves in financial difficulty if arrangements have already been made which are contingent upon the receipt of monies for the property offered for sale.

33. **Vendor and Dummy Bidding.** ‘Vendor bidding’ involves a vendor, or their representative, making a bid on a property which is disclosed during an auction in order to stimulate competition and ensure that a property reaches at least the reserve price to be sold. ‘Dummy bidding’ occurs when an agent, or their representative, makes undisclosed bids to artificially inflate the price of the property without a genuine intention to purchase. An REIA summary of some of the regulation covering vendor and dummy bidding at property auctions in the various Australian State and Territory jurisdictions is included at Attachment 1.

34. An analysis of Attachment 1 reveals clear inconsistencies in the way vendor and dummy bidding are regulated. The majority of Australian State and Territories specifically regulate vendor bidding via legislation, except for the Northern Territory (NT) where the practice is regulated only via the auction contract and industry code of conduct. Vendor bids can generally be made provided that this intention is declared prior to the auction, and at each vendor bid in the auction as in Western Australia (WA), South Australia (SA), NT, QLD and New South Wales (NSW). Any number of vendor bids may be made up to the reserve price, except in ACT and NSW, where only one vendor bid can be made, and in WA where a limit of 10 bids applies under the industry code of conduct for auctions. There is also variation in who may make vendor bids (ranging from any person in Tasmania [TAS] to only the auctioneer in Victoria [VIC]) and whether or not bidders must be registered (bidders must be registered in SA, NSW and Queensland [QLD] under legislation).

35. Dummy bidding is specifically prohibited in VIC, ACT, NSW, QLD, SA and TAS while there are general provisions relating to misleading or deceptive conduct in other jurisdictions.

36. Under the provisions of the TPA 1974, the ACCC takes the view that vendor bidding is likely to be misleading unless it is declared both before the auction and at the time of each vendor bid. The ACCC considers dummy bidding to be misleading and deceptive in all situations where the bidder does not have a genuine interest in purchasing the property.

37. From the business and consumer perspective, there are inconsistent State and Territory regulations, unnecessary regulations, and overlapping 'general' regulations at the national level. Yet the cross-jurisdictional aims of consumer protection in these areas are the same in terms of preventing auction bidders from being misled or unfairly treated.

38. Consider the situation as it applies to a property owner moving from NSW to QLD. If the property owner was to sell their property at auction in NSW prior to moving to QLD they would be afforded one vendor bid, which must be made by the auctioneer, and declared at the time it is made. If this same consumer later intends to purchase a property at auction in QLD, they may not be aware that the vendor may appoint any person to make any number of vendor bids on their behalf, and provided that the bidder is declared by the auctioneer on the day (like all other bidders), any bids made by the vendor representative will be treated like all other bids received.

39. This clear inconsistency results in a situation wherein the interstate property investor is at a disadvantage and may not fully appreciate their rights as a consumer or elements of the actual sale process. Essentially, if the consumer assumes that the vendor may only make one declared bid, the consumer may subsequently become engaged in competitive bidding with the vendor (or their representative) without realising. In this situation, the consumer may well be better off if they were to instead terminate bidding and begin negotiating a private treaty purchase after the property has been passed in. While it is not possible to generalise the loss faced by consumers in these situations, it is clear that these may be substantial in the case of major property investments.

40. In order to help clarify the situation, the REIA has worked with the ACCC to publish REIA guidelines on the TPA for real estate agents who are involved in property auctions. These guidelines are provided at Attachment 2.

Overlapping Regulation

41. **The TPA and State and Territory Fair Trading Acts.** One obvious area that should be targeted in any review of Australia's consumer policy is the duplication of regulation across jurisdictions caused by regulatory overlap. For example, a clear duplication of regulation occurs in the case of general consumer protection laws, with the Commonwealth *Trade Practices Act 1974* and State and Territory Fair Trading Acts (FTAs - which are essentially identical to the TPA) applying to many businesses simultaneously. Like inconsistency, overlap imposes additional unnecessary compliance burdens on affected businesses and acts as a barrier to cross boarder trade and competition.

42. From a consumer perspective, overlapping regulation causes confusion on many levels. Consumers moving from one jurisdiction to another, or purchasing goods or services from an outside jurisdiction, may not fully understand the rights applicable to their transactions. Anecdotally, most consumers would not be aware that the national TPA applies only to corporations whereas State and Territory FTAs apply to all individuals and businesses in trade. Over and above the confusion arising from a poor appreciation of the rights actually applicable in any given jurisdiction, consumers would generally not be aware that they have a choice of regulator to which to complain depending upon the problem being experienced. How would a consumer know whether it is best to make a particular complaint to their State or Territory Fair Trading Office or to the ACCC?

43. The costs imposed on business through needing to be aware of, and comply with, overlapping regulations at different levels of Government can result in businesses not offering goods or services for sale across boarders, lessening competition and increasing prices for consumers. Businesses may also be unsure of the appropriate legal status (e.g. corporation vs. sole trader) under which they should operate in order to ensure that particular regulatory provisions do, or do not, apply. Some businesses may also, potentially, be subject a situation wherein consumers may complain first to one regulator and, when unsatisfied with the result, may later complain to a different regulator, causing the complaint process to be unnecessarily long and fraught with uncertainty. Businesses may refrain from legitimate business activities during the time it takes to ultimately resolve a complaint.

Inadequate Regulation

44. **Property Spruikers.** There is currently a regulatory gap relating to the activities of certain types of property spruikers. This issue is however covered under the context of the operation of the Ministerial Council on Consumer Affairs (MCCA) in the section to follow.

The Operation of the Ministerial Council on Consumer Affairs

45. The developmental process and timeliness of government policy development in consumer protection is of particular concern to the REIA. The Ministerial Council on Consumer Affairs (MCCA) and the Standing Committee of Officials on Consumer Affairs (SCOCA) are key elements of the development process for consumer protection policy. While each committee is useful for co-ordinating a whole of government response to consumer issues, the committee process is generally much too slow to respond to rapidly emerging consumer issues, sometimes resulting in a 'stop gap' piecemeal approach by various jurisdictions awaiting outcomes. Despite being on the MCCA agenda, there is sometimes no practical solution implemented for many years in some instances. The REIA examines two examples below which illustrate the real estate industry's concerns.

46. **Property Spruikers.** In August 2003, as a result of the activities of property spruiker Henry Kaye which left a number of property investors significantly out of pocket, MCCA decided to review the licensing of property investment advisers. The Joint Parliamentary Committee on Corporations and Financial Services subsequently also conducted a separate review on the same issue. The Terms of Reference essentially related to the effectiveness of current legislation of the property investment advice industry in protecting consumers. The Joint Parliamentary Committee tabled its report in June 2005. Some four years after the event, the real estate industry is still awaiting a report from MCCA. Meanwhile, property investment "advisers", often referred to as spruikers, may continue to operate in the marketplace.

47. The Joint Parliamentary Committee recommended in its report, inter alia, that "... the regulation of property investment advice, but not of real property or real estate transactions generally, should be a Commonwealth responsibility". The REIA supports this approach, and it is understood that all the State and Territory governments support this approach. Moreover, the Committee suggested that a definition of property investment would be needed. As part of the review process, the REIA has supplied the MCCA with a useful definition of a "Property Investment Promoter" which is included at Attachment 3.

48. **Residential Tenancy Databases (RTDs).** RTDs are operated by private companies who collect information about tenants and make it available to real estate agents. Agents use this information to assess a person's rental history when considering an application to rent a property. RTDs exist as a resource to assist the property manager in assessing the suitability of a tenant and thereby identify problem applicants. A tenancy database should never be used in a threatening manner to ensure the performance of the tenant. If a rental default by a tenant is actionable under law and is in accordance with relevant Codes of Conduct and the Privacy Act, then the REIA considers that a tenancy database listing is legitimate.

49. RTDs are an effective risk management tool. The access cost is minimal; however the cost of non-use can be expensive in terms of potential litigation, professional negligence, property damage and loss of rent. The most likely effect on a tenant, who has defaulted, if listed on an RTD, is future difficulty of finding alternate accommodation.

50. Legislation governing the operation of RTDs has been developed and enacted in Queensland, New South Wales and the Australian Capital Territory. As each State and Territory concerned has its own existing privacy, property, consumer protection and estate agent laws, each jurisdiction has developed and enacted differing legislation on RTDs. This process has undoubtedly contributed to further fragmentation and inconsistency in the regulation of personal information at the State and Territory level.

51. This inconsistency results in uncertainty for potentially vulnerable and disadvantaged consumers who have moved jurisdictions as to whether or not they may be listed on tenancy databases for particular tenancy breaches. In addition, there are additional costs for real estate businesses and RTD operators in terms of needing to deal with multiple regulatory regimes. As tenants, investors and even some real estate agents routinely operate across Australian borders, it makes sense for all parties to be treated consistently in all jurisdictions. Why should a tenant be listed for a particular tenancy breach in one jurisdiction but not in another?

52. To address this emerging problem, MCCA and the Standing Committee of Attorney's General (SCAG) agreed to establish a Residential Tenancy Database Working Party, which completed a Report on Residential Tenancy Databases on 27 September 2005. The Working Party recommended that the Australian States and Territories develop nationally consistent legislation for the regulation of RTDs addressing the relationship between real estate agents and tenants. This recommendation was adopted by SCAG during April 2006 and the REIA understands that the Queensland representative on MCCA now has responsibility for drafting the required legislation.

53. This issue remains unresolved after almost two years. Given the time required for proposed legislation to be drafted in QLD, negotiations to occur across jurisdictions and consistent legislation to be finally implemented, it is likely that this process, if completed, will take between three to five years. Moreover, NSW introduced its own legislation because the MCCA process could not provide an outcome. The REIA considers that this timeframe is much too long and not in the interests of consumers or business. A consistent approach should be able to be agreed and implemented inside of two years on an issue such as this where all parties agree in principle and consumer objectives are essentially the same.

54. In conclusion, the operation of MCCA (and SCOCA and SCAG) should be reviewed to identify the reasons why consumer policy issues are being progressed so slowly. Further, the REIA suggests that the operation of these committees should be more transparent to external stakeholders to improve accountability and responsibility for the progression of particular policy items.

Generic Regulation Vs Industry Specific Regulation

55. The REIA considers that it is preferable to impose broad, generic regulation that can be applied to all situations rather than a plethora of industry specific regulations that must be separately drafted, monitored, enforced and maintained. The general provisions of the TPA and State and Territory FTAs are now tried and tested and appear to work well in most situations. However, in attempting to be all things to all parties in all situations, the legislation is necessarily general in its language and it can sometimes take many years of regulatory interpretation, and even legal proceedings, before a common understanding can be achieved. For instance, the provisions of the TPA prohibiting misleading and deceptive conduct relate to business conduct generally. Unusual or disputed situations can, and do, give rise to differing interpretations as to whether or not a specific action should be considered to be misleading under the Act.

56. Generalised regulation can also impose costs on businesses, which in themselves, are not the target of the intended regulation. For instance, national privacy legislation is applicable to most businesses trading in personal information even though many of these businesses would be deemed low risk if considered individually.

57. In some situations, it will be more appropriate to legislate on an industry specific basis to ensure both that the level of regulatory detail required to address a particular problem is workable and that unnecessary regulations are not imposed on unrelated businesses. If there is one clear principle that should be applied when considering whether or not to impose generic or industry specific regulation, it should be to ensure that industry specific problems do not become general business costs. As outlined previously, the real estate sector is already subject to a plethora of industry specific regulations that aim to deliver a level of consumer protection.

58. Where industry specific regulation is envisioned, it should be undertaken on a national basis to ensure that particular industries are not also unfairly hamstrung by the imposition of inconsistent regulation across different jurisdictions. Unless governments take action to arrest this problem, regulatory multiplier effects can ensue, wherein X jurisdictions impose Y industry specific regulations.

Co-Regulation and Self-Regulation

59. In general, Australian businesses take the view that “less is better” when considering the potential introduction of new regulation and there is an important role for co-regulation and self-regulation in the property sector. Real estate industry associations have a clear interest in ensuring that consumers remain confident and active participants in the property market.

60. Self-regulation allows the real estate industry to address specific issues before and as they arise, ensuring that consumers are protected without imposing prohibitively high costs on businesses. As illustrated previously, it can sometimes take many years for legislation to be introduced, whereas industry can usually develop and implement a system of self-regulation in a much shorter timeframe.

61. It is also fair to say that industry expertise can assist in developing a much more efficient regulatory model that requires significantly lower ongoing government resource commitments. However, there is usually an inherent cost in self-regulation which government should not presume is the sole responsibility of industry. Governments should be prepared to contribute to industry self-regulation where this is the least cost model as compared to direct government regulation.

62. There are many examples of self-regulation in the real estate industry including the various REI codes of conduct and the articles of association that underpin membership of professional industry bodies. The REIA and REIs also provide specific guidance to members on various trade issues including price advertising, property inspections, auctions, tenders, photographic representations and the distribution of general insurance products.

63. Attachment 1 also contains evidence of the willingness of industry to self-regulate. For instance, holders of a real estate licence in NSW, WA and ACT are required under legislation to complete a minimum level of training annually as part of a continuing professional development (CPD) program. However, while there is no legislative requirement that this training be undertaken by agents in other jurisdictions, members of real estate institutes (REIs) in QLD and VIC must undertake CPD as a requirement of membership. Arguably, industry self regulation in QLD and VIC has produced the same outcome at a lower cost to government than mandating CPD requirements under legislation. The question must therefore be asked whether or not specific legislation is actually required in this area.

64. Similarly, licensed agents are required under legislation to hold professional indemnity insurance in NT, while in other jurisdictions, the real estate industry self-regulates by requiring REIs members to hold professional indemnity insurance. Again, it is debateable whether or not specific legislation is required.

65. Co-regulation is also important in the real estate sector. The REIA has previously worked with ASIC and the ACCC to produce guidelines for agents on various matters including the TPA. As a result of the guidance provided to agents by the REIA and REIs in recent years, complaints received by the ACCC concerning real estate agents dropped 16% during 2005/06 to their lowest level in over five years.

66. There is also some level of real estate industry participation in statutory dispute resolution processes that may arise in respect of State and Territory consumer protection laws. For instance, the QLD Commercial and Consumer Tribunal (CCT) is an independent statutory body under the jurisdiction of the QLD Minister of Tourism, Fair Trading and Wine Industry Development. The role of the CCT is that of a quasi-judicial body with jurisdiction under a number of Acts, including the QLD Property Agents and Motor Dealers Act (PAMD). The CCT's responsibility under the PAMD Act is to:

- a. hear disciplinary charges against regulated licensees and employees;
- b. decide on consumer claims above \$10,000 against the PAMD Claim Fund;
- c. review administrative decisions;
- d. review the decisions of the CEO of the QLD Office of Fair Trading (OFT) relating to registration and licensing issues and minor claims;
- e. conduct public examinations of agents, marketeers and consumers; and

- f. provide for dispute resolution (serious matters may proceed to a full hearing of the CCT. However, other matters may be resolved during a pre-hearing conference between relevant parties and a sessional member).

67. The CCT comprises a full-time chairperson who is a qualified lawyer, a presiding case manager and either one, two or three sessional members at the discretion of the chairperson. For real estate related claims, at least one of these persons must have an industry background in matters relating to property agents and the real estate industry.

68. Real estate specific sessional persons are appointed by the Governor in Council following a process wherein public expressions of interest are called for, usually by way of a newspaper advertisement. Any suitably qualified person with the required industry experience is eligible for consideration.

69. The orders handed down by the CCT are binding. Final decisions are supported by written reasons and these decisions are published on the QLD OFT website and via a media release. Appeals relating to the CCT's decision must be heard in a District Court and can be based on questions of law only.

70. In other situations there may be case for enforceable guidelines to be imposed upon industry such as the ACCC sanctioned Franchise Code of Conduct or the recently established Horticulture Code of Conduct.

71. As a general rule, the Federal Government has used the approach of educating business and consumers before beginning to introduce or police regulations. For instance, the Federal Government went to considerable lengths to educate businesses prior to the introduction of the GST as well as prior to the enforcement of WorkChoices provisions. This approach is particularly useful in the case of broader regulation that is applicable to all businesses and all consumers.

72. There is also the global context for business and consumers. The REIA is a founding member of the International Consortium of Real Estate Associations (ICREA) comprised of 26 countries. ICREA has established arrangements and protocols for agent education and the selling of properties internationally which have not yet been sanctioned by sovereign governments. As in this circumstance, business will generally lead the way when regulations are required to ensure a stable business environment. If governments are consigned to playing "catch up" there may be inappropriate pressure on the need for a political response where there is market failure. For this reason, it is preferable that governments play a role in the development of industry co-regulation or self-regulation if this can be achieved in a timely fashion.

Code of Conduct

73. Currently, Real Estate Institutes in each State and Territory develop and administer their own codes of conduct reflecting State and Territory based legislation and regulations. In some cases, parts of these codes have been increasingly included in State government legislation. Accordingly, there is no national code of conduct for the real estate industry.

74. There are benefits associated with industry organizations such as the REIA playing a lead role in developing the code of conduct for the industry they represent. The industry brings its expertise and insights into the marketplace and consumer requirements to code development. A sense of ownership within the industry, and therefore the potential for greater knowledge and compliance, would be cultivated.

75. The REIA supports the notion of co-regulation because this provides for involvement of the industry. Notwithstanding the principles of co-regulation, the REIA believes that vigorous co-regulation would have significant cost implications for industry associations. The costs of industry regulation and compliance would be shifted largely from government to an industry association that represents most, but not all, of the industry. The enforceable nature of a code of conduct is questionable. While the industry association might be able to regulate compliance amongst its members, assuming government and legal support for compliance enforcement, it cannot be responsible for non-members whose actions might reflect negatively upon complying members.

76. It is fundamentally important to develop a code of conduct which can provide for consumer/stakeholder complaints and concerns, but there is also the importance of education, training and the legislative environment in which the industry is conducted. For example, the real estate industry is subject to legislation which differs significantly from State to State.

77. There are significant costs, time and administration implications for the industry body involved in proposed code essentials such as:

- a. an industry reference committee,
- b. reporting requirements,
- c. consumer communication requirements,
- d. training requirements for the industry, and
- e. a code administration body.

78. Should a model of endorsed voluntary codes of conduct be adopted, there would need to be some overlap between ACCC-authorized codes to deal with anti-competitive behaviour, endorsed codes that deal with industry best practice, and State legislation. The inter-relationship between the three regulatory regimes is complex.

Small Businesses as Consumers

79. As mentioned in the introduction section of this submission, small businesses are also consumers in their own right. In principle, small businesses should not be subject to a different standard of consumer protection than the consumers that they themselves deal with. However, in order to enshrine this within the business to business trading environment, it may sometimes be necessary to specifically address the issues that may arise when, for example, small businesses are generally at a disadvantage compared with their larger suppliers. In these instances it is appropriate that specific regulations apply, such as those relating to collective bargaining under the TPA.

80. Small businesses simply may not be equipped to deal with particularly onerous regulations or may present a much lower risk to consumers than larger, more complicated and inter-connected businesses. In these cases, it may be more appropriate to simply provide the small business sector with relief from the regulations that would otherwise apply. The Australian consumer policy framework should have the inherent flexibility to exempt small businesses from particular regulations generally or on an industry by industry basis.

HOW CAN CONSUMER POLICY BE IMPROVED GENERALLY?

81. The Australian consumer protection framework must be urgently reviewed with a view to removing regulatory gaps, improving consistency, reducing duplication and reducing red tape. While the REIA is mindful of recent initiatives in the area of red tape, such as the Report of the Taskforce on Reducing Regulatory Burdens on Business, “Rethinking Regulation”, and the PC Research Report on “Performance Benchmarking of Australian Business Regulation”, there are many areas still to be addressed.

82. In recognition of the ongoing erosion of Australian domestic borders from a business and consumer perspective, the REIA generally favours the progressive establishment of nation-wide consistent laws and strong national regulators to deal with consumer and business issues where appropriate and practical. Where this is not practicable, the REIA favours the close harmonisation of regulation across jurisdictions with strict limitations on any proposed unilateral deviation. For example, real estate practice should remain the legislative responsibility of the States and Territories but other areas such as the TPA, the Corporations Act, and the Financial Service Reform Act, and Privacy Act should be the responsibility of the Federal Government. State legislation should be harmonised; at the very least.

83. While the harmonisation of existing regulation is laudable, this process inevitably results in lengthy negotiations without any guarantee that national consistency will actually result (see the preceding section of this submission) and may also lead to a lowest common denominator outcome. Unfortunately, participants in the harmonisation process all too often advocate harmonisation provided that “it is done MY way”. Even if harmonisation is achieved, without adequate restrictions on unilateral changes by participating jurisdictions, regulatory regimes will usually begin to move apart again as individual jurisdictions make changes in response to political pressures arising from localised market failures. As a result, harmonised regimes must be constantly reviewed to ensure that harmonisation is maintained.

84. The establishment of truly national laws and national regulations would enable consumers and businesses to operate freely around Australia without the costs, barriers or uncertainties currently associated with operating in different jurisdictions. Governments too would benefit in that the consistency of regulatory effort is certain to be more efficient than the current piecemeal approach. Liberated government resources could then be more appropriately utilised in other areas.

85. Before new regulation is introduced, there should also be a demonstrable net benefit for the Australian economy after considering both consumer and business perspectives. Too often governments react to political pressures to address a consumer issue without properly considering the views of affected businesses or non-target consumers that may be impacted.

In essence, governments must be able to demonstrate that the cost of intervention is lower than the cost of no intervention.

86. There has been much criticism of the regulation impact assessment process over recent years. This process is notoriously lengthy when issues are politically contentious, suffers from a lack of transparency and generally does not allow for a refining of the assessment after a period of review by affected stakeholders. Where the government's intentions are strong and unequivocal, the process can sometimes be perceived by some stakeholders to simply be a 'rubber stamp' on an inevitable outcome.

87. Another important barrier to achieving a truly national consumer framework stems from the constitutional roles of the various Australian Governments. The clearest example of this problem is evident in the overlapping Commonwealth TPA and the various State and Territory Fair Trading Acts. Although the TPA forms the basis of Australian consumer protection policy, it is limited in its application to corporations, sole-traders and partnerships as a result of the constitutional limitations placed on the Federal Government, resulting in duplicated legislation at the State and Territory level to ensure that all other businesses and individuals are captured.

88. It may be the case that a rationalisation of the roles of the various Australian Governments will be required if a truly national consumer and business policy framework is to be achieved. To some extent, the whole notion of "consumer protection" should be recast and considered more usefully as the "consumer and business policy framework". In other words, the protection of consumers is currently provided through the regulation of business but there is little account of the responsibilities of consumers.

89. The REIA suggests that Australian governments should consider establishing a new consumer policy framework which takes into account the constitutional roles of governments, business requirements and the responsibilities of consumers generally. This framework could perhaps consist of four tiers including:

- a. a nation-wide Act of consumer rights and responsibilities which includes consumer policy objectives;
- b. a broad regulatory framework for businesses (i.e. a nationally and universally applicable equivalent of the TPA);
- c. a series of national industry specific guidelines (or regulations if required) for businesses and consumers developed in conjunction with stakeholder groups; and
- d. industry specific legislation (for real estate practice) which is consistent across all States and Territories.

90. The establishment of such a framework is consistent with the current direction of Australian consumer regulation and would enshrine an improved balance of responsibility between governments, business, and consumers.

91. The proposed framework should be the responsibility of a Federal/State combined agency which includes both consumer and competition policy. This regulatory agency should have the power to devise industry specific guidelines in conjunction with business and consumer stakeholders and should be resourced sufficiently to enable proactive policing of all tiers of the policy framework in order to prevent damage being suffered by consumers and

respond in a whole of governments approach to market failure. The Terms of Reference for this agency would clearly show the role and responsibilities of the Federal and State governments with clear demarcation and cooperation lines. The Terms of Reference would ensure consistency in all facets of the consumer protection framework, legislation, and enforcement, particularly at State level.

SUMMARY

92. The REIA supports the review of Australia's consumer protection framework and believes that the case for change is overwhelming. There are many instances of regulatory gaps, inconsistency and overlap that must be urgently addressed to ensure that consumers are empowered and protected while maintaining a competitive business environment.

93. The REIA suggests that a rationalisation of the roles of the various Australian Governments will be required if a truly national consumer and business policy framework is to be achieved. The make-up and resourcing of MCCA should also be reviewed to ensure much more efficient operation under the current consumer policy framework as well as under any new framework.

94. Ultimately, the whole notion of "consumer protection" should be recast as a "consumer and business policy framework" which takes into account the constitutional roles of governments, business requirements and the responsibilities of consumers generally. This framework could perhaps consist of four tiers including:

- a. a nation-wide Act of consumer rights and responsibilities;
- b. a broad regulatory framework for businesses (i.e. a nationally and universally applicable equivalent of the TPA);
- c. a series of industry specific guidelines (or regulations if required) for businesses and consumers developed in conjunction with both stakeholder groups; and
- d. industry specific legislation which is consistent across all States.

95. The establishment of such a framework is consistent with the current direction of Australian consumer regulation and would enshrine an improved balance of responsibility between governments, business and consumers. The new consumer and business policy framework will need to be administered by a single nation-wide Federal/State regulatory agency that has responsibility for both consumer and competition policy matters, but importantly, implementation and enforcement of State based legislation must remain at State level albeit in a consistent fashion.

Prepared by:

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11 May 2007

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Attachments:

1. Summary of State Legislation Regulating Real Estate Practice
2. Auctions: REIA Guidelines to the Trade Practices Act
3. REIA Proposed Definition of a Property Investment Promoter

SUMMARY OF STATE LEGISLATION
REGULATING REAL ESTATE AGENCY PRACTICE

AS AT 30 JUNE 2006

In addition to various Commonwealth legislation: Corporations Act, Tax Acts, Insurance Acts, Discrimination Acts, Privacy Act, Trade Practices Act, ASIC Act, First Home Owners Act, Financial Services Reform Act, etc.

	QLD	NSW	VIC	SA	WA	TAS (regulator comments included 2006)	NT (regulator comments included 2005)	ACT
Principal legislation	<i>Property Agents and Motor Dealers Act 2005.</i>	<i>Property, Stock and Business Agents Act 2002.</i> <i>Property Stock and Business Agents Regulations 2003.</i>	<i>Estate Agents Act 1980.</i> <i>Estate Agents (Professional Conduct) Regs 1997.</i> <i>Estate Agents (Contracts) Regs. 1997.</i> <i>Estate Agents (General, Accounts and Audit) Regs 1997.</i> <i>Estate Agents and Agent's Representative (Courses of Instruction and Examinations) Regs 1995.</i> <i>Estate Agents (Education) Regs 2004.</i> <i>Estate Agents (Exemption) Regs</i>	<i>Land Agents Act 1994.</i> <i>Land and Business (Sale and Conveyancing) Act 1994.</i>	<i>Real Estate and Business Agents Act 1978.</i> <i>Real Estate and Business Agents Regulations 1979.</i> <i>Code of Conduct for Agents and Sales Representatives.</i>	<i>Auctioneers and Real Estate Agents Act 1991.</i> <i>Auctioneers and Real Estate Agents Regulations 1992.</i> <i>Property Agents & Land Transactions Act 2005.</i>	<i>Agents Licensing Act 1979.</i>	<i>Civil Law [Sale of Residential Property] Act 2004.</i> <i>Residential Tenancies Act 1997.</i> <i>Agents Act 2003.</i> <i>Agents Regulation 2003.</i>

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	QLD	NSW	VIC	SA	WA	TAS (regulator comments included 2006)	NT (regulator comments included 2005)	ACT
			1997. Estate Agents (Exemption) Regs 2005. Estate Agents (Fees) Regs 1996.					
Administration	Office of Fair Trading.	Office of Fair Trading.	Consumer Affairs Victoria. Business Licensing Authority.	Office of Consumer and Business Affairs.	Real Estate and Business Agents Supervisory Board – Department of Consumer Employment Protection.	Auctioneers And Real Estate Agents Council of Tasmania.	Department of Justice.	Office of Fair Trading.
Other relevant legislation	<i>Residential Tenancies Act 1994.</i> <i>Body Corporate and Community Management Act 1997.</i> <i>Land Sales Act 1984.</i>	<i>Residential Tenancies Act 1987.</i> <i>Agricultural Tenancies Act 1990.</i> <i>Anti-Discrimination Act 1977.</i> <i>Consumer, Trader & Tenancy Tribunal Act 2001.</i> <i>Community Land Management Act 1989 (plus other Community Acts).</i> <i>Contracts Review Act 1980.</i> <i>Conveyancing Act 1919 (various).</i> <i>Conveyancers</i>	<i>Residential Tenancies Act 1997.</i> <i>Retail Tenancies Reform Act 1998.</i> <i>Retail Leases Act 2003.</i> <i>Sale of Land Act 1962.</i> <i>Subdivision Act 1988.</i> <i>Fair Trading Act 1999.</i> <i>Property Law Act 1958.</i> <i>Settled Land Act 1958.</i> <i>Transfer Of Land Act</i>	<i>Strata Titles Act 1988.</i> <i>Community Titles Act 1996.</i> <i>Residential Tenancies Act 1995.</i> <i>Fair Trading Act 1987.</i> <i>Real Property Act 1886.</i> <i>Retail & Commercial Leases Act 1995.</i> <i>Land Valuers Act 1994.</i> <i>Conveyancers Act 1994.</i> <i>Development Act 1993.</i>	<i>Auction Sales Act 1973.</i> <i>Auction Sales Regulations 1974.</i> <i>Caravan Parks and Camping Grounds Act 1995.</i> <i>Caravan Parks and Camping Grounds Regulations 1997.</i> <i>Commercial Tenancy (Retail Shops) Agreements Act 1985.</i> <i>Commercial Tenancy (Retail Shops) Agreements Regulations 1985.</i> <i>Conservation and</i>	<i>Residential Tenancy Act 1997.</i> <i>Residential Tenancy Amendment Act 2003.</i> <i>Door to Door Trading Act 1986.</i> <i>Strata Titles Act 1998.</i> <i>Duties Act 2001.</i> <i>Fair Trading Act 1990.</i> <i>Acts Interpretation Act 1931.</i> <i>Residential Tenancy Act 1997.</i> <i>Residential Tenancy Amendment Act</i>	<i>Residential Tenancies Act 1999.</i> <i>Building Act 1993.</i> <i>Unit Titles Act 1975 1976.</i> <i>Business Tenancies (Fair Dealings) Act 2003.</i> <i>Law of Property Act 2000.</i> <i>Real Property (Unit Titles) Act 1975</i> <i>Auctioneers Act 1996.</i>	<i>Civil Law [Sale of Residential Property] Regulation 2004.</i> <i>Residential Tenancies Regulation 1998/2005.</i>
Other relevant legislation cont...								

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	QLD	NSW	VIC	SA	WA	TAS (regulator comments included 2006)	NT (regulator comments included 2005)	ACT
Other relevant legislation cont...		<p><i>Licensing Act 1995 .</i></p> <p><i>Conveyancers Licensing Act 2003.</i></p> <p><i>Crimes Act (various).</i></p> <p><i>Dividing Fences Act 1991.</i></p> <p><i>Environmental Planning & Assessment Act 1979.</i></p> <p><i>Fair Trading Act 1987.</i></p> <p><i>Land Tax Act 1956.</i></p> <p><i>Land Tax Management Act 1956.</i></p> <p><i>Local Government Act 1993.</i></p> <p><i>Landlord & Tenant Act 1899.</i></p> <p><i>Landlord & Tenant (Rental Bonds) Act 1977.</i></p> <p><i>Law of Property Act 1898.</i></p> <p><i>Occupational Health & Safety Act 2000.</i></p> <p><i>Real property Act 1900.</i></p> <p><i>Retail Leases Act 1994 (various other</i></p>	<p>1958.</p> <p><i>Retirement Villages Act 1986.</i></p> <p><i>Legal Profession Act 2004.</i></p> <p><i>Occupational Health & Safety Act 2004.</i></p> <p><i>VCAT Act 1998.</i></p> <p><i>Electronic Transactions Act 2000.</i></p> <p><i>Essential Services Act 1999.</i></p> <p><i>Land Acquisition & Compensation Act 1986.</i></p> <p><i>Heritage Act 1995.</i></p> <p><i>Historic Buildings Act 1981.</i></p> <p><i>Planning & Environment Act 1987.</i></p> <p><i>Valuation Of Land Act 1960.</i></p> <p><i>Duties Act 2000.</i></p> <p><i>Land Tax Act 1958.</i></p> <p><i>Trustee Act 1958.</i></p>	<p><i>Land Acquisition Act 1969.</i></p> <p><i>Landlord and Tenant Act 1936.</i></p> <p><i>Law of Property Act 1936.</i></p> <p><i>Heritage Places Act 1993.</i></p> <p><i>Fences Act 1975.</i></p> <p><i>Business Names Act 1996.</i></p> <p><i>Crown Lands Act 1929.</i></p> <p><i>Encroachments Act 1944.</i></p> <p><i>Environment Protection Act 1993.</i></p> <p><i>Geographical Names Act 1991.</i></p> <p><i>Irrigation Act 1994.</i></p> <p><i>Legal Practitioners Act 1981.</i></p> <p><i>Local Government Act 1934.</i></p> <p><i>Local Government Act 1999.</i></p> <p><i>Misrepresentation Act 1972.</i></p> <p><i>Native Title (South Australia) Act 1994.</i></p>	<p><i>Land Management Act 1984.</i></p> <p><i>Conservation and Land Management Regulations 2002.</i></p> <p><i>Consumer Affairs Act 1971.</i></p> <p><i>Fair Trading Act 1987.</i></p> <p><i>Fair Trading (Retirement Villages Code) Regulations 2003.</i></p> <p><i>First Home Owner Grant Act 2000.</i></p> <p><i>First Home Owner Grant Regulations 2000.</i></p> <p><i>Heritage of Western Australia Act 1990.</i></p> <p><i>Land Administration Act 1997.</i></p> <p><i>Land Administration Regulations 1998.</i></p> <p><i>Licensed Surveyors Act 1909.</i></p> <p><i>Licensed Surveyors Amendment Act 1996.</i></p> <p><i>Local Government Act 1995.</i></p>	2005.		

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Other relevant legislation cont...		<i>Retail Acts).</i> <i>Retirement Villages Act 1999.</i> <i>Strata Schemes (Freehold Development) Act 1973.</i> <i>Strata Schemes (Leasehold Development) Act 1986.</i> <i>Strata Schemes Management Act 1996 (various other Strata Acts).</i> <i>Trustee Act 1898.</i> <i>Trustee Act 1925.</i> <i>Various Insurance Related Acts.</i> <i>Valuers Act 2003.</i> <i>Valuation of Land Act 1916.</i> <i>Conveyancing (Sale of Land) Regs 2005.</i> <i>Residential Tenancies Regs 2006.</i>	<i>Building Act 1993.</i> <i>Business Names Act 1962.</i> <i>Business Licensing Authority Act 1998.</i> <i>Commercial Arbitration Act 1984.</i> <i>Domestic Buildings Contracts Act 1995.</i> <i>Equal Opportunity Act 1995.</i> <i>Fences Act 1968.</i> <i>Forestry Rights Act 1996.</i> <i>Goods Act 1958.</i> <i>Information Privacy Act 2000.</i> <i>Instruments Act 1958.</i> <i>Land Act 1958.</i> <i>Landlord & Tenant Act 1958.</i> <i>Limitations of Actions Act 1958.</i> <i>Local Government Act 1989.</i>	<i>Native Vegetation Act 1991.</i> <i>Partnership Act 1891.</i> <i>Pastoral Land Management and Conservation Act 1989.</i> <i>Rates and Land Tax Remission Act 1986.</i> <i>Retirement Villages Act 1987.</i> <i>Stamp Duties Act 1923.</i> <i>Unclaimed Moneys Act 1891.</i> <i>Valuation of Land Act 1971.</i> <i>Natural Resources Management Act 2004.</i>	<i>Native Title (State Provisions) Act 1999.</i> <i>Property Law Act 1969.</i> <i>Occupational Safety and Health Act 1984.</i> <i>Occupational Safety and Health Regulations 1996.</i> <i>Residential Tenancies Act 1987.</i> <i>Residential Tenancies Regulations 1989.</i> <i>Retirement Villages Act 1992.</i> <i>Retirement Villages Regulations 1992.</i> <i>Sale of Land Act 1970.</i> <i>Settlement Agents' Code of Conduct (Principal Regulation) 1982.</i> <i>Soil and Land Conservation Act 1945.</i> <i>Swan River Trust Act 1988.</i> <i>Strata Titles Act 1985.</i> <i>Strata Titles General</i>			

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			<i>Partnership Act 1958.</i> <i>Public Holidays Act 1993.</i> <i>Small Business Commissioner Act 2003.</i> <i>Unclaimed Monies Act 1962.</i> <i>First Home Owners Grant Act 2000.</i>		<i>Regulations 1996.</i> <i>Transfer of Land Act 1893.</i> <i>Transfer of Land Amendment Act 1996, 1999, 2003.</i> <i>Transfer of Land Regulations 2004.</i> <i>Transfer of Land (Surveys) Regulations 1995.</i> <i>Valuation of Land Act 1978.</i> <i>Valuation of Land Regulations 1979.</i>			
Scope Scope cont..	Real estate agents. Registered sales person. Auctioneers. Property developers. Restricted letting agents. Pastoral houses. Motor dealers. Commercial agents.	Real estate agents. Stock and station agents. Business agents. Strata managing agents. Community managing agents. On-site residential property managers. Buyers agents. Valuers. Auctioneers.	Estate Agents which includes: 1. auctioneers. 2. agents representatives.	Registered land agents. Sales Representative. Business Agents. Commercial Leasing Agents.	Real estate agents. Sales representatives. Sales representative (property management).	Real estate agents. Auctioneers. Sales consultants (includes property managers).	Real estate agents. Business Agents. Registered agent's representatives. Conveyancing Agents.	Real estate agents. Stock and station agents. Business Agents. Travel agents. Employment agents.

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Exemptions	Nil. Binds the Crown.	Does not bind the crown, a Council under Local Government Act 1993, public statutory authority prescribed by the regulations, Public Trustee, executor etc, solicitor when carrying out functions, sale by auction under the Charitable Fundraising Act 1991.	Estate Agents Act 1980 does not bind the Crown.	Property manager engaged in residential leasing working for a registered agent.	Pastoral companies (limited).	Does not bind the crown.	Does not bind the crown.	Nil.
Licence categories	Real estate agent. Registered sales person. Auctioneer. Property developer. Resident letting agent. Pastoral house. Pastoral house director. Pastoral house manager. Pastoral house auctioneer. Property developers must be licensed if they sell more than 6 residential properties	Real estate agent. Stock and station agent. Business agent. Strata managing agent.	Estate agent.	Land agent (not licensed in SA, 'registered').	Real estate and business agents licence (individual). Real estate and business agents licence (firm/partnership). Real estate and business agents licence (body corporate). Sales representatives registration. Sales representatives registration (property management). Currently no licence is required to conduct Strata	Real estate auctioneer. General auctioneer. Employed auctioneer Probationary auctioneer Temporary auctioneer. Real estate agent. Real estate manager. Real estate sales consultant.	Real Estate, Business & Conveyancing Agents.	Real estate agent. Stock and station agent. Business agent. Travel agent. Employment agent. Sales Persons.
Licence categories cont..								

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	QLD	NSW	VIC	SA	WA	TAS (regulator comments included 2006)	NT (regulator comments included 2005)	ACT
	per year and have 15% or more interest in a property otherwise they must appoint a licensed real estate agent.				Management transactions.			
Advertising application for licence	Not publicly advertised.	Not applicable.	Not publicly advertised.	Not applicable.	Must be advertised.	Must be advertised. <i>*May change post the release of new regulations.</i>	Must be advertised.	Must be advertised.
Issuing authority	Office of Fair Trading.	Office of Fair Trading.	Business Licensing Authority.	Office of Consumer and Business Affairs.	Real Estate and Business Agents Supervisory Board – Department of Consumer and Employment Protection (DOCEP).	Auctioneers and Real Estate Agents Council of Tasmania.	Agents Licensing Board of the Northern Territory.	ACT Office of Fair Trading.
Term of licence Term of licence cont...	1 or 3 years.	1 year.	Reviewed annually.	Annual.	Licence Licence is continuous <u>but must</u> also have Triennial Certificate to operate as an agent, which is renewed every three years. Registration Three years.	Annual.	Annual.	Annual.
Continuing Professional Development (CPD) requirements	Nil REIQ conducts CPD at no cost to members and staff of REIQ Accredited Agencies	Compulsory 12 points.	Mandatory for REIV members. Estate Agents Act, S.45 permits Director of Consumer Affairs Victoria to require estate agents / agent's	No CPD requirements.	<i>Compulsory from January 2007</i>	There are no CPD requirements.		12 points annually (6 assessed & 6 non-assessed e.g. seminar attendance). Applies to both licensed agent and salesperson.

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			representatives to undertake professional development training. (no requirement as at 30/06/2006)					
Suitability for all classes of licences	<p>Must not be affected by bankruptcy.</p> <p>18 years of age or older.</p> <p>Cannot have a conviction in previous 5 years.</p> <p>Not currently disqualified.</p> <p>Must satisfy educational requirements.</p> <p>To be eligible, must complete specified competencies from the national real estate training package approved by ANTA.</p>	<p>Fame and character of person or if corporation the directors and secretary and whether corporation fit and proper.</p> <p>Been deemed competent in prescribed competencies.</p> <p>Attained 18 years of age.</p>	<p>18 years of age or older; and</p> <p>Passed a prescribed course or examinations; and</p> <p>Has not in the past 10 yrs been convicted or found proven any offence including drugs, fraud, violence or dishonesty punishable by imprisonment of 3 months or more.</p> <p>Is not an insolvent under administration.</p> <p>Is not disqualified.</p> <p>Been engaged as an agent's representative for not less than 1 year or periods amounting to one year whether full or part-time, during the 3 years immediately prior to applying for a licence; or</p>	<p>For land agents/salespersons must hold necessary qualifications as prescribed under regulations.</p> <p>For property managers no formal qualification requirements.</p> <p>For land agents/real estate salespersons not to have been convicted of an offence of dishonesty in the 10 years prior to application.</p> <p>Is not suspended or disqualified from practicing.</p> <p>Is not an undischarged bankrupt (only agent).</p> <p>For agents under Strata Titles Act/Community Titles Act no formal qualification</p>	<p><i>Real estate and business agents licence (individual):</i></p> <p>18 years of age or older.</p> <p>Minimum 2 years work experience in real estate and business broking industry.</p> <p>Good character and repute and a fit and proper person to hold a licence.</p> <p>National Police clearance (max 1 month old)</p> <p>Have access to sufficient assets and financial resources available comply with the requirements of this Act.</p> <p>Understands fully the duties and obligations imposed by this Act on agents.</p> <p><i>Real estate and</i></p>	<p>Holds the prescribed educational qualifications.</p> <p>Must not have been convicted of an indictable offence.</p>	<p>18 years of age or older.</p> <p>Fit and proper person.</p> <p>Completed course of competency-based training approved under s.22.</p> <p>Holds prescribed qualifications for the class of licence which is the subject of the application.</p> <p>Has other prescribed qualifications or experience, or</p> <p>By reason of qualifications and experience is competent to carry on business on own account as a licensed agent.</p> <p>The applicant will be insured for whole period of licence under an approved indemnity insurance policy; or</p>	<p>Attained 18 years of age.</p> <p>Fit and proper person.</p> <p>Is not disqualified.</p> <p>Been deemed competent in prescribed competencies.</p>

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Suitability for all classes of licences cont..			<p>Has held an estate agent's licence within the period of 5 years immediately preceding application; or</p> <p>Has completed the relevant standards of competency required by the Estate Agents Council (Council not made a determination).</p>	requirement.	<p><i>business agents licence (firm/partnership):</i></p> <p>All parties are of good character and repute.</p> <p>All parties are proper persons to hold a licence.</p> <p>Have access to sufficient assets and financial resources to comply with the requirements of this Act.</p> <p>Partnership of no more than three, at least one person must be a licensed agent.</p> <p>Partnership of more than three, then at least two persons must be licensed.</p> <p>The person responsible for day to day operations must be licensed.</p> <p>Changes to partnership holding a licence must advise REBA of any changes in management structure.</p> <p><i>Real estate and</i></p>		The applicant is exempt from the requirement under s.108B to be insured under an approved indemnity insurance policy.	

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Suitability for all classes of licences cont..					<p><i>business agents licence (Body corporate):</i></p> <p>All directors are of good character and repute and fit and proper to hold a licence.</p> <p>Body corporate has access to sufficient assets and financial resources to comply with the requirements of this Act.</p> <p>Company of no more than three, at least one must be a licensed agent.</p> <p>Company of more than three, then at least two persons must be licensed.</p> <p>The person responsible for day to day operations must be licensed.</p> <p>Changes to partnership holding a licence must advise REBA of any changes in management structure.</p> <p>If the triennial certificate holder is</p>			

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Suitability for all classes of licences cont..					<p>not an owner of the company, then there must be an employment contract in place with an annual remuneration, exclusive of sales commission, for \$30,000 (REBA policy).</p> <p><i>Registration:</i></p> <p>Must work under the supervision of a licensed real estate and business agent.</p> <p>18 years of age or older.</p> <p>Be a person of suitably good character to hold a certificate of registration.</p> <p>Have a full understanding of the duties and obligations of a real estate and business sales representative as is imposed by the Act.</p> <p>National Police Clearance (max 3 months old).</p>			
Suitability for all classes of licences cont..								

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<p>Eligibility for Real Estate Agent's Licence</p>	<p>Completion of 17 specified units of competency from the PRD01 Training package as follows :-</p> <p>PRDRE13A;PRDRE15A;PRDRE18A;PRDRE39A;PRDRE11A;PRDRE30A;PRDRE12A;PRDRE14A;PRDPOD62A;PRDRE10A;PRDRE22A;PRDRE26A;PRDRE19A;PRDRE37A;PRDRE28A;PRDRE16A and PRDRE09A (This unit is the only competency from the Diploma level).</p>	<p>Completed 16 identified units from PRD01.</p> <p>Complete Land Economics Degree: sales, property management, business agent, strata manager, stock & station.</p>	<p>Education Certificate IV in Business Agency Practice Course consisting of 17 competencies (3 state-based, 14 from PRERE01 Cert IV; and</p> <p>Twelve months industry experience.</p>	<p>To be registered as a Land Agent, the person must have completed the PRD50101 Diploma of Property (Real Estate):</p> <p>PRDRE01A PRDRE02A PRDRE03A PRDRE04A PRDRE05A PRDRE06A PRDRE08A PRDRE09A PRDRE19A PRDRE28A BSAFIN501B BSAFIN502B BSXFM1504A BSXFM1511A</p> <p>To achieve the Diploma competency must be demonstrated in all 14 specified core units, 1 elective unit at Diploma level and 9 core units in Certificate IV (total 24 units).</p> <p>Salespersons are not registered in SA. In order to qualify as a salesperson, the minimum qualification is a PRD40101</p>	<p>PRD50101 (as stated) plus Real Estate Law (ABH510, ABH511, NAP750) Rural Sales (ABH530) and Selling businesses (ABH531).</p> <p>REIWA or TAFE or other RTO.</p>	<p>(a) (i)Completed the prescribed educational qualifications (Diploma in Property (Real Estate) or Diploma in Business (Real Estate Management)); and</p> <p>(ii) been engaged full time as a real estate sales consultant for a total period of at least 2 years during the 5 years immediately preceding the application for the licence; or</p> <p>(b) has held a real estate agents licence or a real estate managers licence at any time during the 5 years immediately preceding the application for the licence; or</p> <p>(c) has -</p> <p>(i) at any time during the 5 years immediately preceding the application, been authorized under the</p>	<p>Units of competency enabling completion of:</p> <p>Certificate IV for Agents Representative License.</p> <p>Diploma in Real Property for Full License (i.e. Able to operate a real estate business).</p>	<p>Completion of three competencies:</p> <ul style="list-style-type: none"> • Real Estate Agent. • Stock and Station Agent. • Business Agents License.
<p>Eligibility for Real Estate Agent's</p>								

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Licence cont..				<p>Certificate IV in Property (Real Estate):</p> <p>PRDRE10A PRDRE11A PRDRE12A PRDRE13A PRDRE14A PRDRE22A PRDRE30A PRDRE37A PRDPOD62A</p> <p>To achieve recognition at Certificate IV level, competency must be demonstrated in all 9 specified core unit and 8 elective units (total 17 units).</p>		<p>law of another State or Territory of Australia to carry on the business of a real estate agent in that State or Territory; and</p> <p>(ii) been engaged full time as a real estate agent in another State or Territory of Australia for a total period of at least 2 years during the 5 years immediately preceding the application for the licence; and</p> <p>(iii) satisfied the Council, on examination or inquiry, that he or she has sufficient knowledge and experience of the real estate agency business to be granted a real estate agents licence.</p>		
Eligibility for Real Estate Agent's Licence cont..								
Eligibility for Auctioneer's Licence	Must have completed 2 competencies from the PRD01 Training Package for a	Must have a real estate or stock and station agent's licence endorsed; must hold unit of competency	No licence required. Any licensed estate agent or an agent's representative can	No equivalent licence. No licence is required in SA only salesperson	Obtain a real estate auctioneer's licence through the "Commercial Agents Squad" – WA Police	License issued based on satisfying issuing authority by exam that applicant has the relevant knowledge to	Licensed under the Auctioneers Act. Person must be over 18, of good character & fit and proper.	Has educational qualification or is a licensed agent.

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Eligibility for Auctioneer's Licence cont..	<p>provisional auctioneers licence, namely :- PRDRE39A and PRDRE14A.</p> <p>To obtain a full auctioneers licence, 3 further units of competency need to be completed together with 5 auctions under the supervision of a licensed auctioneer.</p> <p>These units are PRDRE09A; PRDRE26A and PRDRE28A.</p>	PRDRE26A or PRDSS23A.	conduct auctions.	qualification to auction land.	<p>Department. Application is made through the Court of Petty Sessions. Auction licence is granted through a court hearing.</p> <p>To conduct Real Estate auction:</p> <ol style="list-style-type: none"> 1. No formal training is required. 2. Auctioneer conducts the auction through and on behalf of a Real Estate Agent. 3. Any person may obtain a chattels auctioneer's licence and auction chattels. <p>Renewed annually.</p>	<p>auction.</p>		
Eligibility for Business Agent's licence	No equivalent licence.	Specified units of competency from Business Broking Training Package.	No equivalent licence.	No separate licence or qualifications required.	No separate licence.		<p>A separate licence can apply or a person can obtain a combined real estate & business agent's licence.</p> <p>Applicant must meet eligibility criteria as stated for real estate</p>	As for Agents licence.

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							agent, except for competency-based training course. As a course is yet to be designed & delivered, the Board will accept former qualification – Certificate IV in Real Estate.	
Eligibility for Property Developer's Licence	The property developer's licence is only required if a developer sells more than 6 residential properties in a 12 month period. There are no educational requirements to obtain this category of licence.	No equivalent licence.	No equivalent licence.	No equivalent licence.	No equivalent licence.	No equivalent licence.	No equivalent licence.	No equivalent licence.
Eligibility for Restricted Letting Agent's Licence	Completion of 6 units of competency from the PRD01 Training Package, namely :- PRDRE18A; PRDRE39A; PRDRE10A; PRDRE19A; PRDRE37A and PRDRE28A.	No equivalent licence.	No equivalent licence.	No equivalent licence.	No equivalent licence.	No equivalent licence.	No equivalent licence.	No equivalent licence.
Eligibility for Pastoral House Licence	No prescribed qualifications.	No equivalent licence.	No equivalent licence.	No equivalent licence.	No equivalent licence.	No equivalent licence.	No equivalent licence.	No equivalent licence.
Eligibility for Pastoral House	No prescribed	No equivalent	No equivalent	No equivalent	No equivalent	No equivalent	No equivalent	No equivalent

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Director's Licence	qualifications.	licence.	licence.	licence.	licence.	licence.	licence.	licence.
Eligibility for Pastoral House Manager's Licence	No prescribed qualifications.	No equivalent licence.	No equivalent licence.	No equivalent licence.	No equivalent licence.	No equivalent licence.	No equivalent licence.	No equivalent licence.
Eligibility for Pastoral House Auctioneer's Licence	No prescribed qualifications.	No equivalent licence.	No equivalent licence.	No equivalent licence.	No equivalent licence.	No equivalent licence.	No equivalent licence.	No equivalent licence.
Real Estate Salespersons Real Estate Salespersons cont..	<p>Must be registered.</p> <p>At least 18 years of age.</p> <p>Completed 4 units of competency from the PRD01 Training package, namely :-</p> <ul style="list-style-type: none"> • PRDRE13 A; PRDRE15 A; PRDRE18 A and PRDRE39 A <p>Employees do not have to be registered if they perform clerical duties only such as collecting and banking rent.</p>	<p>Must be registered:</p> <p>3 specified NSW units of competency;</p> <p>4 different registration categories.</p>	<p>Eligibility for Estate Agent's representative.</p> <p>At least 18 yrs.</p> <p>Passed proscribed course of examinations.</p> <p>Police check & C/T.</p> <p>3 state-based competencies.</p> <p>See requirements under "Suitability for all classes of licences", and</p> <p>Has not been convicted of any offence involving fraud, dishonesty, drug trafficking or violence punishable by 3 months or more imprisonment; and</p> <p>Is not an insolvent under administration;</p>	<p>Not registered but must:</p> <p>Hold necessary qualifications.</p> <p>Not been convicted of an offence of dishonesty in the last 10 years prior to application.</p> <p>Not suspended or disqualified from practising.</p> <p>Sales Representatives must have completed Cert IV in Property (Real Estate) (see units identified above).</p>	<p>Must be registered.</p> <p>Sales Representatives Registration:</p> <p>ABH500, ABH501, ABH502, ABH510, ABH522, ABH523, ABH524.</p> <p>TAFE Certificate for Real Estate Sales Representatives; or</p> <p>REIWA Certificate for Real Estate Sales Representative; or</p> <p>Certificate in Real Estate Business and Property Management (Curtin University).</p> <p>Sales Representatives Registration (Property Management)</p>	<p>Must be licensed.</p> <p>Must have satisfy the Council that sufficient knowledge is held (completion of REIT Sales Licensing Course or sit exam with Auctioneers and Real Estate Agents Council).</p> <p>Must maintain licence with 8 hours training per year.</p> <p><i>*May change post the release of new regulations.</i></p>	<p>(Referred to as a registered agent's representative).</p> <p>Must be registered to carry out functions for and on behalf of licensed agent.</p> <p>Person eligible for registration if over 18, fit and proper, holds prescribed qualifications and will be employed by licensed agent within the Territory.</p>	<p>Must be registered.</p> <p>Police check and educational qualifications required.</p> <p>Also the requirements listed under "Suitability for all Classes of License".</p> <p>Must be a qualified property manager.</p>

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Real Estate Salespersons cont..			and Has not been disqualified from holding an Estate Agent's Licence; and Has not had a claim upheld against the Estate Agent's Guarantee Fund; and Is not a represented person under the Guardianship and Administration Act 1986.		ABH500, ABH502, ABH510, ABH514, ABH512, ABH515. TAFE Certificate for Real Estate Property Management; or REIWA Certificate for Real Estate Property Management.			
Buyer's Agent	Buyers Agents need to be registered (if working under a licensed agent) or have a full real estate agents licence if conducting their own business as a buyers agent.	Must be registered - licence restricted to the activities of a buyers agent as specified by the Property Stock and Business Agents Act 2003.	If perform, or hold out as willing to perform, estate agency work must be a licensed estate agent or an agent's representative.	Not covered by the legislation.	Buyers Agents need to be registered (if working under a licensed agent) or have a full real estate agents licence if conducting their own business as a buyers agent.	Licensing not required.	Falls within ambit of definition of a real estate agent.	Must be registered.
Property Developer Salesperson	Must be registered as a salesperson and the same requirements apply.	No equivalent.	No equivalent.	No equivalent.	Must be registered as a salesperson and the same requirements apply.	No equivalent.	No equivalent.	No equivalent.
Trainee Auctioneer	Must complete 2 competencies from the PRD01 Training Package for a provisional auctioneers licence, namely :-	Trainee Livestock Auctioneers only.	No equivalent.	No equivalent.	No equivalent.	Probationary auctioneer must undertake course and exam with licensing authority.	No equivalent.	No equivalent.

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	PRDRE39A and PRDRE14A.							
Licence lending Licence lending cont...	Prohibited.	Prohibited.	Prohibited.	Sales representatives need not be registered in SA and can work under the registered land agent.	Prohibited. Licence and triennial not transferable.	Must be able to satisfy substantial attendance in the office.	Prohibited.	Is an offence.
Substitute licensee	< 30 days, licensee may appoint in writing. > 30 days Chief Executive must approve another licensee.	An executor may act for not more than 3 months where a licensee has died. Department of Fair Trading may appoint a receiver.	30 days – licensee may give notice in writing to Business Licensing Authority. Written notice to BLA for short term manager approval.	Not applicable.	Must have a licensee on the premises. If licensee leaves, the corporate entity can obtain three months approval to operate without a licensee until a new one is appointed. Under approval by the Real Estate and Business Agents Supervisory Board.	A temporary manager's permit may be issued to an agent for a sales consultant who is qualified for this purpose to manage an office of an agent for a maximum period of six weeks in any year. To be qualified, the sales consultant must have held a license for a period exceeding two years. In the event that a real estate agent dies, the executor of the estate of the late licensee is deemed to be qualified to hold the license for a period not exceeding 12 months.	Registrar may approve operation of a registered office in absence of business manager for period not exceeding 60 days.	N/A.

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Professional indemnity insurance	Discretionary. Required for REIQ membership.	No legislative requirements.	Required for REIV membership.	No legislative requirement. Required for REISA membership	No requirement in legislation. Compulsory for REIWA membership.	Discretionary but required for REIT membership.	Mandatory, unless exempted.	Discretionary but required for REIACT membership.
Supervision of business	A principal licensee or an employed licensee must be in charge each place of business.	A principal licensee or an employed licensee must be in charge in each place of business. OFT has specified what consists of 'supervision' under the Supervision Guidelines.	A licensed estate agent must manage an estate agency office.	A natural registered land agent must manage a real estate office.	A licensed estate agent must manage an estate agency office. They must be on site for a significant amount of time. They must be able to show that they give adequate supervision and are in bona fide control.	A licensed real estate agent, real estate manager or authorised sales consultant must manage an estate agency office.	Each licensed agent must ensure there is at all times in the agent's service a business manager who is a licensed agent, in respect of each office of the business carried on under licence. A person may be appointed to be business manager of more than one office.	Licensed agent must manage business.
Prohibited Practices Prohibited practices cont...	Only licensees or registered salespersons can make representations to the public regarding properties for sale or for rent. Only a licensed person can be paid a fee or commission for letting or selling real estate. Only a licensed property developer or real estate agent can make an "unsolicited" invitation to another	Only licensees or registered employees can make representations to the public. Can only share commission with partners/employees and other registered agents. Must not publish false or misleading information. Must have Contract for Sale of Land available before marketing	Only licensed estate agents / agent's representatives may make representations to the public.	A land agent and any person in a prescribed relationship to that land agent as defined in legislation is not allowed to undertake any conveyancing. Must have a written Sales Agency Agreement. Can only share commission with partners/employees and other registered agents. Must not make a	Only licensees or registered salespersons can make representations to the public regarding properties for sale or for rent. Only a licensed person can be paid a fee or commission for letting or selling real estate. Must make disclosures if you are a party to the deal. An agent must not demand, retain or	Must be licensed to handle property transactions.	Unlicensed persons not to act as agents.	Must be licensed or registered to handle property transactions. A full list of prohibited practices is contained in the Agent's Act 2003.

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	person to attend a property information session.	commences.		statement that is false or misleading. An Agent or employees not to have interest in land or business that agent is commissioned to sell. Not to receive deposit in more than 3 instalments.	receive a discount or rebate which relates to a service in connection to the transaction unless the agent has disclosed and obtained written consent to the retaining of the discount or rebate.			
Agency appointments	<p>Must be in writing. Form 22a required in every circumstance.</p> <p>All appointments are to be made on the Government approved document Agents must observe statutory procedures when listing.</p> <p>Exclusive and sole agency appointments are limited to a maximum of 60 days but may be renewed not earlier than 14 days prior to expiry.</p> <p>Use of the proper forms is critical as agency appointments will be rendered ineffective</p>	<p>Terms prescribed in P, S & BA Act and Regulations.</p> <p>Must be in writing to claim commission.</p> <p>Written appointment signed by Principal.</p> <p>Specifies term, period of duration and means of termination.</p> <p>Circumstances in which fees are payable.</p> <p>The amount of the fee or the way it is to be calculated.</p> <p>If residential, agreement must also state the terms specifying both the way in which the licensee's</p>	<p>Must be in writing to claim commission and outgoings; and</p> <p>Written appointment signed by Principal.</p> <p>Before Principal signs written appointment Principal advised commission and outgoings are negotiable.</p> <p>Written appointment contains details of:</p> <ol style="list-style-type: none"> 1. Commissions and outgoings 2. Fee as percentage and dollar amount if fee calculated on percentage basis 3. Identification of 	<p>Must be in writing (offence if not) and must be in writing to recover commission and expenses.</p>	<p>Must be in writing to claim commission and outgoings; and</p> <p>Written appointment signed by Principal.</p> <p>Before Principal signs written appointment Principal advised commission and outgoings negotiable.</p> <p>Written appointment contains details of:</p> <ol style="list-style-type: none"> 1. Commissions and outgoings. 2. Fee as percentage and dollar amount if fee calculated on percentage basis. 3. Identification of 	<p>Must be in writing in order to claim or recover commission otherwise the licensee must seek the leave of the court to institute legal proceedings to recover.</p>	<p>Must be in writing and must be signed by all names registered on the title.</p>	<p>Must be in writing.</p> <p>Electronic forms available with conditions on appointment.</p>

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Agency appointments cont..	<p>if non-complying documentation is used.</p> <p>Agents must disclose any rebates, business referrals and any perceived conflict of interest.</p>	<p>remuneration is to be calculated together with the dollar amount of that remuneration in relation to the licensee's estimate of the selling price of the land; and an estimate of the amount of the expenses or charges the licensee expects to incur and for which they claim to be entitled under the agreement to be reimbursed.</p> <p>Must state for rural and residential "This fee has been negotiated between the parties."</p> <p>Terms specifying how licensee is to be reimbursed for expenses and charges.</p> <p>The Principal must be served with a signed copy of the written agreement within 48 hours.</p>	<p>source of any rebate</p> <p>4. Statement regarding venue for complaint</p> <p>The Principal must be given a signed copy of the written appointment.</p> <p>Agents must disclose rebates which must be passed on to principals.</p> <p>Commission sharing to be disclosed, if commission shared with anyone not employed by selling agent or with whom agent is in partnership.</p>		<p>source of any rebate.</p> <p>4. Statement regarding venue for complaint.</p> <p>The Principal must be given a signed copy of the written appointment.</p>			
Limitation on sole / exclusive agencies	60 days maximum for residential property. May be renewed not more than 14 days prior to	Nil, but for residential, vendor can terminate agreement after 90 days, with 30 days	No limit but deemed to be 60 days from date of agreement or 30 days after date of auction if no end	Not applicable.	Nil.	Nil.	Nil.	Nil.

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	expiry.	written notice.	date inserted in agreement.					
Remuneration and Recovery of Monies	<p>An agent may only recover a commission or any other financial reward or benefit if they are:</p> <ol style="list-style-type: none"> 1. licensed; 2. the licence authorises performance of the particular activity; and 3. the appointment is in writing on the approved form. 	<p>Must be licensed.</p> <p>Only entitled to commission if the appointment is in writing and as prescribed (see Agency Agreement above).</p> <p>No action or other proceedings for recovery until the expiration of 28 days after a statement of claim has been served on the principal.</p>	See under "Agency Appointments".	As per written sales agency agreement between land agent and consumer.	<p>Subject to written authority.</p> <p>Selling fee payable only at settlement.</p>	Must be in writing to recover or claim commission.	No recovery of a fee, commission or other gain or reward unless licensed.	As per written agreement.

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Commissions	<p>Regulated maximum for residential sales, residential property management, and rural transactions.</p> <p>Commission must be specified in the agency appointment as a dollar amount or a percentage of the final sale price.</p> <p>The maximum commission scale is exclusive of GST.</p> <p>Commission on commercial or business transactions is not regulated.</p>	Deregulated.	Deregulated.	Deregulated.	Deregulated.	<p>Deregulated.</p> <p>REIT authorised to publish recommended scale as a guide.</p>	Deregulated.	Deregulated.
Fees, charges and expenses	<p>An agent may recover specific fees, charges and expenses to be incurred by the agent on behalf of the client.</p> <p>These can be paid in advance or reimbursed by the client upon receipt of an itemised statement of expenditure, and must be detailed in the Appointment to Act ..</p>	Only entitled if in Agency Agreement (see above).	Only entitled to be paid commission & expenses if hold an engagement or appointment hat complies with S.49A, Estate Agents Act 1980.	All fees, charges and expenses must be included in the Sales Agency Agreement.	<p>All fees and recoupment of expenses must be by written agreement and each fee or expense must be initialled by the Principal.</p> <p>Property Management – authority to approve essential repairs (limited).</p>	Not applicable.	Not regulated.	Only entitled if in written agreement.

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Fees, charges and expenses cont..	<p>Fees</p> <p>A fee is the cost of a service provided by an agent. A fee can be charged for a service not normally considered a part of a real estate agent's prescribed activities when selling, managing or renting properties.</p> <p>A fee could be charged for the following services:</p> <ol style="list-style-type: none"> 1. Supervising and inspecting major repairs and renovations; 2. Lodging building plans, and overseeing building applications; 3. Reading meters; 4. Coordinating advertising consultants, copywriters, photographers, graphic artists and designers; 5. Coordinating a marketing 							

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Fees, charges and expenses cont..	<p>campaign that involves detailed market analysis, project or development feasibilities;</p> <p>6. Coordinating sales agents who are not employees of the Licensee;</p> <p>7. Consulting with architects, engineers and designers on behalf of a client; and</p> <p>8. Providing written reports that do not involve the sale, management or rental of a property.</p> <p>A fee cannot be charged or recovered for any additional agency service unless the client has authorised the agent in writing on the approved Appointment to Act form.</p> <p>An agent is not permitted to charge a consumer a fee relating to the</p>							

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Fees, charges and expenses cont..	<p>preparation of documents relating to a real estate transaction. This includes tenancy applications, lease agreements, management agreements, sales contracts, written market appraisals (relating to the sale or rental of a property) or listing documentation fees.</p> <p>Charges</p> <p>A charge is a cost incurred by the agent whilst performing duties on behalf of the client.</p> <p>A charge or cost is fully recoverable by the agent if authorised by the client and provision is made on the Appointment to Act document.</p> <p>Charges are common in a continuing agency. An example of charges might be: * bank fees; * telephone, fax, and postage; * courier services; *</p>							

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Fees, charges and expenses cont..	<p>photocopying; and* travelling costs for the collection of rent or inspection of properties.</p> <p>Expenses</p> <p>An expense is where the agent has incurred a financial liability on behalf of the client. An expense could be:</p> <ol style="list-style-type: none"> 1. Promotional fees which include advertising and marketing costs; 2. Searches; 3. Other consultancy fees such as decorators, tradespeople, pest control, building inspectors etc; and 4. Appointment of an Auctioneer. <p>All fees, charges and expenses must be quoted on the Appointment to Act form as GST inclusive.</p>							

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Publishing business names in property advertisements	No requirement.	Licensee must publish business name. PSBA Act allows a variation in NSW to publish either: 1. Business name. 2. Partnership name. 3. Trading Name.	Mandatory – must specify name of business and registered office: Estate Agents Act 1980,S.42(1).	No requirement.	Mandatory.	Mandatory.	Act requires agent to advertise that agent is licensed and business address.	Mandatory.
Disclosure of Rebates (to seller)	Any benefit or rebate must be fully disclosed on the Appointment to Act agreement (Form 22).	Disclosure required under Sec 47 to all parties. Must disclose rebates and discounts in the agency agreement.	Any r rebate must be fully disclosed and passed on to principal. See under “Agency Appointments”.	Disclosure is mandatory.	Mandatory.	Discretionary.	Agent is required to declare a beneficial interest in purchase or sale of land.	Rebates or benefits must be disclosed.
Disclosure to buyers Disclosure to buyers cont...	Agents must disclose: 1. Any relationship and the nature of the relationship (whether personal or commercial) with any party to whom the agent refers the buyer for professional services. 2. Whether the	Licensee must disclose beneficial interest in property.	Agents must adhere to legal requirements concerning “secret” commissions and conflicts of interest.	Agent to disclose beneficial interest in property.	An agent who recommends to a party to a transaction a service provider, the agent must make written disclosure to the party of any significant relationship, connection or affinity between the agency and the supplier. Where the relationship, connection or affinity between the agency and supplier is		Agent required to disclose a beneficial interest in purchase or sale of land in prescribed form.	Must be disclosed.

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	<p>agent will benefit from this referral or business relationship, either financially or through other means; and</p> <p>3. The amount of the financial gain or other benefit to be paid to the agent including any commission or fees to be received from the seller.</p>				capable of producing a conflict between the interests of a party to the transaction and the agent, the agent shall include in such a written disclosure an explanation of the nature of the potential conflict.			
Beneficial interest	<p>Beneficial interest must be declared if a real estate agent or salesperson buys a property listed with the agency. No commission is payable by the seller.</p> <p>Real estate agents selling their own properties are not required to declare beneficial interest.</p>	Sec 49 – disclosure required to all parties.	Prohibited from purchasing property agency engaged or appointed to sell, except in accordance with exemption granted under Estate Agents Act 1980, S..55	Prohibited from purchasing property for which an agency appointment is held unless exempted by the Minister.	<p>Must have client's written agreement to pay commission. If there is a conflict of interest (agent or sales representative is the prospective purchaser of the agent's listing), the agent must disclose the conflict of interest, gain consent to the transaction proceeding.</p> <p>The seller can agree to pay the agent's commission providing the seller understands they have no obligation to</p>	An licensee who wishes to purchase a property listed for sale with the agency by whom the licensee is employed is required to make a full disclosure of his/interest, obtain the vendor's written approval and obtain that approval prior to the commencement of negotiations.	Beneficial interest must be declared.	Beneficial interest must be declared.

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					pay that fee.			
Residential Contracts of sale	Usually prepared by real estate agents.	Usually prepared by solicitor or conveyancer.	Estate agents and solicitors prepare.	Prepared by land agents/salespersons.	Usually prepared by real estate agents or their sales representatives.	Prepared by sales consultants.	Must be in a form approved by the Registrar.	Prepared by solicitors or agent/salesperson.
Contract warning statement	Must be first page of any residential sales contract.	Yes. Vendors prescribed warranties per Conveyancing Act. Other warnings in Contract for Sale of Land (NSW).	Contained in Contract Note. Refer to Estate Agents (Contracts) Regulations 1997.	No statutory requirement.	No statutory requirements.	No information provided.	Contract must contain consumer information.	Yes.
Cooling-off periods	A 5 business days cooling-off period applies to all residential sales except sales at public auction (i.e. "under the hammer"). Cooling-off period commences from the time the buyer is notified that the seller has accepted the contract. Buyer may waive or shorten cooling-off period only with a lawyer's certificate.	5 business days unless waived (s.66W Conveyancing Act requirement). No cooling off at sale by auction or if negotiated subsequent to auction but on the same day. Agency agreements have 1 business day cooling off period.	A 3 clear business days cooling-off period applies <u>except</u> where: 1. The property is purchased at or within 3 business days before or after a publicly advertised auction. 2. The buyer receives independent advice from a solicitor before signing the contract. 3. The property is used mainly for commercial or industrial purposes.	2 clear business days from date of issue of Form 1 and signed contract.	Only contracts which are subject to the provisions of the Door to Door Trading Act or Retirement Villages Act	Yes. 2 clear business days except 2 days before day of auction and 2 days after and where there is a waiver option signed.	Four day cooling off period applies.	Yes, 5 working days.

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Cooling off periods cont...			<p>4. The property is more than 20 hectares in size and used mainly for farming.</p> <p>5. The buyer previously signed a contract for the same property.</p> <p>6. The buyer is an estate agent /agent's representative</p> <p>7. The buyer is a Corporation</p>					
Discipline	Property Agents and Motor Dealers Tribunal. Current licensees and executive officers of licensed corporations prohibited from appointment to Tribunal.	Office of Fair Trading.	Consumer Affairs Victoria / Business Licensing Authority / Victorian Civil & Administrative Tribunal (VCAT). REIV disciplines members via Rules of Practice.	Office of Consumer & Business Affairs.	All disciplinary functions undertaken by State Administrative Tribunal (SAT). REIWA provides an arbitration and disciplinary service accessible to members and the public.	Auctioneers & Real Estate Agents Council of Tasmania.	Agents Licensing Board of the Northern Territory. 2 industry members hold office on Board.	Office of Fair Trading.
Appeals	To the courts <u>only on matters of law</u> .	Appeals may be made in relation to the non-issue or renewal of license, to the Court.	Consumer Affairs Victoria decisions / Business Licensing Authority decisions reviewable by VCAT. VCAT decisions reviewable by Victorian Supreme	District Court of South Australia.	State Administrative Tribunal.	Appeals against a Council disciplinary decision are made to the Magistrates Court.	Local Court.	Consumer and Trading Tribunal.
Appeals cont...								

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			Court (questions of law only) REIV determinations reviewable by an independent arbitrator (Commercial Arbitration Act procedures apply).					
Codes of Conduct	REIQ has a Code governing "Standards of Business Practice". Prescribed by Government Regulations. Separate codes for: 1. Real Estate Agents; 2. Auctioneers; 3. Property Developers; and 4. Restricted letting agents. 5. Penalties up to \$15,000 apply for each and every breach.	Prescribed by Regulations.	Estate Agents (Professional Conduct) Regulations 1997. REIV: 1. Code of Conduct. 2. Auction Code of Conduct. 3. Commercial Leasing Code. 4. Body Corporate Code of Conduct. 5. Rules of Practice. 6. Rules of Conduct of an Auction.	No code of conduct in legislation. REISA Code of Conduct.	Issued in terms of REBA Act. Code of Conduct for Agents and Sales Representatives. REIWA has Code of Practice.	Auctioneers & Real Estate Agents Act and Regulations. REIT has a member Code of Conduct. 2005 legislation requires an industry-wide code of conduct.	Contained in ALA.	No code of conduct in legislation.
Fidelity Funds	Claims Fund. Non-contributory. Persons dealing with licensed property	Property Services Compensation Fund. Contributory.	Estate Agents Guarantee Fund. Non-contributory.	Agents Indemnity Fund.	Fidelity Guarantee Fund. Managed by Real Estate and Business Agents Supervisory	Not applicable from 2006.	Agents Licensing Fidelity Guarantee Fund. Moneys of the Fund are comprised of	Consumer Compensation Fund.

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Fidelity funds cont...	developers are precluded from claiming.				Board (REBAs). All applicants of Sales Registration pay \$45, including each renewal. All applicants for licence pay \$150, including each renewal.		contributions and levies paid under Act, licence and registration fees, fines imposed by Board, and interest accrued from investment of moneys of fund.	
Auctions	<p>Qld: Vendor bids must be declared. Dummy bids are banned.</p> <p>All bidders must be registered.</p> <p>Bids will only be accepted from registered bidders.</p> <p>Bidders must use the numbered identifier provided by the auctioneer to make a bid during the auction.</p> <p>The seller may bid, either personally or by a representative</p> <p>If the seller bids for the property, the auctioneer must announce that the</p>	<p>NSW: A single vendor bid is permitted, it can only be made by the auctioneer and must be recorded in the bidder's record. Dummy bids are banned.</p>	<p>Vic: Vendor bids must be registered. Dummy bids are banned.</p>	<p>SA: Dummy bids are banned. The vendor may reserve the right to bid up to but not including the reserve price. This must be announced by the auctioneer in a clear manner prior to the auction. If the vendor sets a reserve price for the property, the vendor may bid for the property personally or by a proxy or representative (including the auctioneer) at any amount or amounts less than the reserve price. In exercising a vendor bid, the auctioneer will act independently and without undue influence from the vendor. A vendor bid will only be exercised if bidding is below</p>		<p>Tas: No registrations of vendor bids required prior to auction. Dummy bids are banned.</p>		<p>ACT: The vendor may make one bid. This bid must be stated as being a "Vendor Bid" immediately the auctioneer mentions the number. Dummy bids are banned.</p>

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	<p>bid is made by the seller.</p> <p>The auctioneer must not accept a bid from a seller that is higher than the reserve price set</p> <p>Any person making a bid on behalf of the seller (including the auctioneer) must be identified at the commencement of the auction and contemporaneously with each such bid being made.</p>			<p>any reserve price that has been specified in writing by the vendor for the sale of the property. All auctions are subject to a reserve price, this fact should be announced by the auctioneer in a clear and precise manner at the commencement of the auction. The reserve price must be confirmed immediately prior to the auction in writing (if not provided beforehand) and there must be only one reserve price. If the reserve price is adjusted during the auction, that change must be confirmed, where possible, in writing. The reserve price must be kept confidential by the agent unless instructed to the contrary by the vendor.</p>				

Prepared by:

REIA Secretariat

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Real Estate Institute of Australia

AUCTIONS

REIA Guidelines to the Trade Practices Act, prepared in collaboration with the ACCC

ACCC Statement of Concern. The key for understanding the difference between legal and illegal bidding under the Trade Practices Act (TPA) is not one of vendor versus 'dummy' bidding, or bidding below versus above the reserve price, but rather whether other potential bidders are liable to be misled that a bid is genuine when it is not. Any bid that is not a genuine bid made by or on behalf of an intending purchaser is likely to mislead other bidders unless effective steps are taken to ensure that bidders are not misled. Full disclosure made to all prospective bidders both at the commencement of an auction and prior to each relevant bid would be such a step. In doing so, care must be taken to ensure that such disclosure is not rendered ineffective by it being disguised by the expressions used or by the way they are given. For example, expressions such as 'the bid is with me' that may not be understood by inexperienced bidders would not amount to effective disclosure.

Dummy bidding at auction involves an agent, or a person acting on the agent's behalf, making bids on a property, on an undisclosed basis, as if they are genuinely interested in purchasing the property, in order to artificially inflate the price of the property. The ACCC considers all vendor bidding to be misleading unless fully disclosed both at the start of the auction and at the time of the bid. The ACCC is concerned that such practices may mislead genuine bidders for the property. The ACCC would be concerned about such conduct regardless of whether it was organised by agents, auctioneers or vendors.

REIA Guidelines. Whilst there is no national statutory code of practice that applies to the regulation of auctions in the real estate industry, the TPA (and the Fair Trading Acts in each State and Territory) will apply to any misleading or deceptive practice in the conduct of auctions. Further, some individual States in Australia have introduced regulations that apply to the conducting of auctions in those States, and some State Real Estate Institutes have introduced codes of practice for auctions. Real estate agents should ensure that those Acts, statutory regulations and any codes implemented by State Institutes are complied with at all times. In addition, the REIA provides the following guidelines with respect to the avoiding of misleading or deceptive conduct in relation to auctions:

- Dummy bidding is fictitious or false bidding at an auction by non-genuine bidders in the audience with no real intention to buy the property. Such conduct is misleading or deceptive and shall not be engaged in by agents or auctioneers.

- When properly declared, vendor bidding is a legal and ethical process. Vendor bidding (the practice of counter-bids being made by or on behalf of a vendor to ensure a property reaches a reserve price at which it can be sold) that is not fully disclosed to bidders is also likely to mislead or deceive other bidders and thus contravene the TPA and other legislation. Consequently, the following procedures must be followed at all times.

⇒ The fact that bids are being made by or on behalf of a vendor and the identity of the person making such bids must be announced by the auctioneer both at the commencement of the auction and contemporaneously with each such bid being made, and in a form and manner that will be understood by all potential bidders.

⇒ Where State law limits the number of vendor bids, the auctioneer shall announce prior to the commencement of bidding for a property the maximum number of bids which will or may be made during the auction by or on behalf of the vendor.

⇒ Where State law makes no specific provisions, no agent or sales person engaged by an agent shall make or assist any other person in making a bid on behalf of the seller unless those bids have been identified in the manner referred to in these guidelines.

⇒ No agent or auctioneer shall permit a bid to be made by or on behalf of a vendor at or in excess of the vendor's reserve price. Further, if a property is being sold at auction without a reserve price being set by the vendor, no agent or auctioneer shall allow any bid to be made by or on behalf of a vendor.

- A real estate agent shall not provide a potential purchaser of a property to be sold by auction.

⇒ an estimate of the value of that property; or

⇒ advice as to the amount that the vendor might be prepared to sell the property for;

when the real estate agent is aware that the value or amount referred to by that real estate agent is less than the reserve price that the seller has set for that auction, unless instructed otherwise by the vendor.



PROPOSED DEFINITION OF PROPERTY INVESTMENT PROMOTER

Proposal

1. That the following measures be considered by the Working Party for the government examination of regulation of property investment advice:
 - a. develop a definition of property investment promoter using the outline shown below;
 - b. licences be required as follows:
 - (1) financial services licence permits the conduct of financial investment advice (presently covered under the FSR Act), property seminars, and financial planning/scheme courses;
 - (2) real estate licence permits the conduct of property seminars which are confined to property and do not include forecasts/predictions, comparison to other asset classes, or legal/financial/tax advice;
 - (3) any seminar or course that involves the sale of property can only be conducted under a real estate licence;
 - (4) registered training organisations are permitted to conduct education courses in investment; and
 - c. the real estate profession (REIA) assist government with an awareness campaign amongst real estate agents as follows:
 - (1) promulgate REIA guidelines on property investment seminars developed in conjunction with ASIC and ACCC (similar to REIA Guidelines for the TPA which were developed in conjunction with the ACCC), and
 - (2) the national training package and CPD for real estate be enhanced to include more cover of the responsibilities of property investment promoters.

Government Objectives

2. The objectives of government in relation to the property investment advice market are to ensure:
 - a. that the market is transparent and operates consistently with community standards and expectations;
 - b. that advisory services to retail investors and prospective investors are of a generally high standard; and
 - c. that retail investor decision-making, and ultimately returns for investors, are generally enhanced by property investment advisory services.

Nature of Property Investment Advice

3. Presently, there would appear to be three broad categories of businesses which are generally agreed in relation to investment advice:

- a. Firstly, real property may be directly purchased through a “High Street” real estate agent. The agent must operate under a real estate licence within stringent State legislation and Commonwealth legislation, eg TPA, Privacy Act, and FSR Act. The FSR Act does not apply to real estate agents in their capacity of selling individual real property. The Act applies to financial products as defined under the Act. The definition of a financial product does not include real property. The FSR does not prohibit the giving of advice regarding investments in real property as part of real estate services. However, if agents compare the potential return on such properties to other financial products like shares or management investments, they may be caught as they may be regarded as providing financial product advice in relation to shares and managed investments.
- b. Secondly, “financial products” may be purchased by a buyer as a result of consultation and include arrangements with a financial services business. A financial services licence under the FSR Act is required by a person who provides financial product advice. A person may also be deemed to be “dealing” or “arranging” in a financial product. The definitions of these activities are clearly detailed in the FSR Act.
- c. Thirdly, businesses may conduct (real) property seminars with the intention of promoting real property for sale, noting that real property is not a financial product. There are two elements within this category, ie those businesses which simply promote specific property for sale and they must operate with a real estate licence to sell property, and those businesses which include “two-tier marketers” with various techniques they use including “get rich quick” techniques, high-energy promotional evenings, free or subsidised inspection flights, and the arrangement of finance etc. The “two-tier marketers” generally do not have either a financial services licence or a real estate licence.

4. The first and second categories above operate appropriately under a licence. In the third category, the operations of the “two-tier marketers” are not clearly specified but they should be caught under legislation. The defining characteristics of the “two-tier marketer” that sets them apart from a legitimate property seminar promoter are the way in which they conduct their business, ie their behaviour, the nature of the “advice” that they give to clients, and sometimes the artificially inflated property price structures that are offered to clients. The nature of their advice usually includes tax planning, risk management, retirement planning, and asset allocation. It may also include the arrangement of finance. Their behaviour is generally characterised by high-pressure promotion and sales techniques which are tantamount to misleading and deceptive conduct and claims which are clearly not achievable or

realistic, ie “if it’s too good to be true, it probably isn’t”. Therefore, a definition of a property seminar promoter is needed.

Proposed Definition Property Seminar Promoter

5. Financial advice is advice about a person’s individual financial circumstances or needs, that recommends strategies and one or more financial products to suit. Financial advice helps individuals to make informed decisions about an individual’s money and develop a strategic approach to managing it. General advice and financial information is not specific to an individual’s financial situation or needs. For example, providing information on property price growth over time is based on historical fact and is therefore informative in nature. It does not constitute financial advice.

6. A property investment promoter should be licensed under the FSR Act if they provide professional business advice on a financial product or real property that is intended, or has the effect of, influencing a person in making a decision to undertake training in schemes to make money from property investment or purchase property as a result of any one or more of the following sort of advice:

- a. making predictions on the future of property,
- b. comparing the likely performance of financial products and property,
- c. helping individuals to set and achieve their long-term financial goals,
- d. individual or general tax planning,
- e. asset allocation,
- f. financial risk management,
- g. retirement planning,
- h. estate or portfolio planning, and
- i. arrange or provide finance.

The behaviour of the property investment promoter is subject to the Trade Practices Act and FSR Act.

7. Similarly, a person or business that sells real property, either as a “High Street” agent or a property investment promoter must operate under a real estate licence. Any entity which carries on the business of selling property on behalf of another entity should be required to hold a real estate licence.

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Secretariat
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