

Wednesday, 6 April 2022

By email: propertymarketreview@nousgroup.com.au

Carolyn Bond AO and Enzo Raimondo
Expert Panel Members
Property Market Review
Victorian Government

Dear Carolyn and Enzo

Victorian Property Market Review

Thank you for the opportunity to make this submission in response to the consultation paper for the Victorian Property Market Review (the **Review**).

Consumer Action Law Centre (**Consumer Action**) does not provide extensive advice and assistance in relation to sale of land matters, but provides the following insights based on the consumer contacts to our Centre as well as our policy expertise which is drawn from consumer advocacy across a range of markets.

The submission provides responses under the following headings, which are drawn from the consultation paper:

- Property search;
- Property purchase and contractual information;
- Conduct and good practice;
- Dispute resolution; and
- Affordability.

About Consumer Action

Consumer Action is an independent, not-for profit consumer organisation with deep expertise in consumer and consumer credit laws, policy and direct knowledge of people's experience of modern markets. We work for a just marketplace, where people have power and business plays fair. We make life easier for people experiencing vulnerability and disadvantage in Australia, through financial counselling, legal advice, legal representation, policy work and campaigns. Based in Melbourne, our direct services assist Victorians and our advocacy supports a just marketplace for all Australians.



Property search

There are a range of issues affecting consumers in their property search. Two key ones are: widespread under-quoting; and incomplete price transparency.

The State Government's under-quoting laws intend to address under-quoting, but it is clear this remains a widespread market issue. Non-compliance with existing laws is a problem, with Consumer Affairs Victoria (CAV) issuing infringement notices and regularly taking enforcement action.¹

Moreover, there is a fundamental challenge with these laws in that the estimated price or range listed by agents on Statements of Information can be less than the reserve or selling asking price. The current law doesn't prevent this. We understand that some agents and vendors do not want to decide on a reserve price until late in a sales advertising period, and thereby rely on an agent's estimated selling price. This can lead to disappointment, distress and wasted costs associated with a purchaser's search, and contribute to a lack of confidence in the market. These laws may be enhanced by requiring a seller asking price to be set, and for the indicative selling price to not be lower than this asking or reserve price.

While we do not have specific insights to the use of Statements of Information, we consider that this information could be improved by (a) it being incorporated into a real estate advertisement, and not merely as a separately downloadable pdf document; and (b) changing its name to a term that describes its content (e.g., Estimated Sale Price Information). We would suggest that any disclosure changes be consumer-tested, but we consider that these changes would make the information more noticed, and therefore more likely to be used, by prospective purchasers.

Another issue facing prospective property purchasers is that there is not complete price transparency about sale prices. While there is some sale information reported in newspapers and on news and real estate websites, it is not complete. Too often, a purchaser finds that a sale price has not been disclosed. This limits the information that purchasers have to inform themselves, and contributes to inefficiency in the market. We understand that all property sale prices are reported to Land Victoria, so would urge that the State Government make this information more accessible.

RECOMMENDATION 1. Amend under-quoting laws to require vendors to set an asking price that informs the indicative selling price

RECOMMENDATION 2. Undertake consumer testing of the Statement of Information to inform its redevelopment, including having the information incorporated directly into real estate advertisements and changing its name to a term that describes its content (e.g., Estimated Selling Price Information).

RECOMMENDATION 3. Publish the sale price of all properties sold in Victoria, to inform transparent marketplace.

¹ See: <https://www.consumer.vic.gov.au/latest-news/enforcing-underquoting-laws-to-protect-home-buyers-news-alert>

Property purchase and contractual information

We consider that improvements could be made to the section 32 statements which contains important information about the property. These statements are often provided as long pdf documents, without any ability to navigate or search electronically, and the information is dense and sometimes incomplete. We suggest the Panel consider ways in which these statements can be improved through:

- Use of a table of contents;
- Making sure any electronic document can be searched;
- Layering information more effectively, i.e. include the most important information and links to find more detailed information that may not be as essential.

We are aware of some issues in relation to the information disclosed, particularly relating to owners corporation information. Purchasers of owners corporation lots are often seeking information about the cost and other requirements of these arrangements, but the information is not always clear. For example, the fee and levy information can be buried in different and varied documents, and there is not always complete information (for example, some buildings have multiple owners' corporations but full information is not provided). It may be better to prescribe how information is displayed to make it simpler for prospective purchasers to understand.

In relation to sale contracts, we understand there is no longer a prescribed form of contract for the sale of real estate. We consider that there are significant benefits from standard-form contracts that ensure that rights and obligations are balanced, particularly where there are non-expert parties involved. While the use of the Law Institute of Victoria and Real Estate Institute of Victoria standard contracts is widespread, this is not uniform, creating unanticipated risks for prospective purchasers.

RECOMMENDATION 4. Make the section 32 statement more user-friendly, including through tables of contents; making it navigable; and layering information more effectively.

RECOMMENDATION 5. Ensure that important information in section 32 statements is easy-to-find and comparable.

RECOMMENDATION 6. Consider re-introducing prescribed sale of land contracts to address any unanticipated risks for prospective purchasers.

Conduct and good practice in the industry

Sellers and purchasers of property rely on advice of estate agents, conveyancers, lawyers, and a range of other professionals during the property purchase process. For this reason, there needs to be robust rules relating to their conduct and effective compliance. While the obligations on estate agents (including representatives), conveyancers, lawyers, and owners corporation managers are reasonably robust, there are gaps regarding other professionals that we consider the inquiry should examine.

First, property investment promoters are largely exempt from regulatory oversight. There are no obligations for these businesses to be licensed or to meet standards, whether it relates to product disclosure, providing services



honestly and fairly, or having effective dispute resolution. Recent collapses of property projects promoted by unregulated spruikers underline the risk of consumer harm from these arrangements.²

There have been numerous parliamentary inquiries that have recommended that property investment advice be regulated in the same way as financial advice – giving responsibility to the Commonwealth Government and the Australian Securities & Investments Commission. For example, a 2016 Senate Inquiry³ and this 2010 Victorian Parliamentary Inquiry⁴ both made similar recommendations. Unfortunately, these recommendations have not been acted upon in any substantive way giving rise to ongoing risk of consumer harm.

Second, buyers agents are becoming more common in the residential property market. While we understand that buyers agents need to have a real estate agent licence to provide services, the regulatory framework does not specifically respond to these types of agents, and it may be that more fit-for-purpose obligations should be developed. We note that CAV does not have specific information about engaging buyers agents on its website, in contrast to consumer affairs regulators in other states.⁵

Moreover, we consider that the policy objective should be to make the property search process more transparent and simpler, thereby prospective purchasers may not need to rely on buyers agents.

The consultation paper asks about the role of the Estates Agent Council and consultation on mechanisms on real estate policy issues. We do not have strong views on the Estates Agent Council, but note its work is not that visible and we don't believe that there has been consultation with consumer advocates such as Consumer Action Law Centre.

Consumer Action has been a member of CAV's Real Estate Reference Panel which was established as a consultative forum between various property-related industry groups, the Business Licensing Authority, and consumer groups (Consumer Action was the sole consumer representative on this group). The focus of this group has been CAV's regulatory responsibilities, rather than policy development. While the forum has been useful in terms of information sharing and intelligence gathering, its inability to focus on policy issues was perhaps short-coming.

Whichever model is chosen, we consider that there is transparency about membership and outcomes of a consultation forum, and greater involvement from consumer groups (noting that there are limited resources for this activity in the consumer advocate sector).

RECOMMENDATION 4. Regulate property investment promoters, marketers and spruikers.

RECOMMENDATION 5. Consider fit-for-purpose regulation, and the development of consumer information, about the role of buyers agents.

² See, AFR, 18 March <https://www.afr.com/property/residential/calls-for-end-to-property-investing-licence-loophole-20220318-p5a5u6>

³ Senate Economics Committee, Scrutiny of Financial Advice, see:

https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Scrutiny_of_Financial_Advice/Report

⁴ Victorian Parliament Law Reform Committee, Inquiry into Property Investment Advice and Marketeers:

<https://www.parliament.vic.gov.au/assembly/tailed-documents/248-lawreform/inquiry-into-property-investment-advisers-and-marketeers>

⁵ E.g., Consumer Protection WA fact sheet: <https://www.commerce.wa.gov.au/publications/buyers-agent-fact-sheet>

RECOMMENDATION 6. Consider additional ways to make the property search process more transparent and simpler.

RECOMMENDATION 7. Any consultative forum on property market issues should be transparent in terms of membership and outcomes, and have involvement of consumer groups.

Dispute resolution

Our consumer advice service regularly receives inquiries about complaints regarding estate agents. These disputes can be about contract terms and conditions, fees charged or conduct of the agent. While we can provide some limited advice, the dispute resolution options are not comprehensive. We are able to refer people to CAV to access its dispute resolution services, but commonly people have previously spoken to CAV. We are then able to explain the availability of civil claims at the Victorian Civil & Administrative Tribunal, but our observation is that people may not proceed due to the expense and difficulty involved in such complaints.

We consider that it would be more effective if there was an external dispute resolution (EDR) scheme to assist with resolving disputes between consumers and property industry professionals. EDR schemes abide by the Benchmarks for Industry-based Customer Dispute Resolution, being accessibility, independence, fairness, accountability, efficiency and effectiveness. The schemes are regularly reviewed to ensure that they are meeting these benchmarks. Among others, schemes that comply with these benchmarks demonstrate the following benefits for dispute resolution:

- Participation in industry EDR schemes are typically a condition of holding a relevant licence, so all businesses in an industry must participate in the scheme;
- Industry EDR schemes are funded by industry, so industry has a financial incentive to minimise consumer disputes;
- Industry EDR schemes typically have independent boards with 50 per cent representation from consumers so the dispute resolution processes are fair and balanced;
- Industry EDR scheme processes provide flexible outcomes to disputes but also have 'teeth' because the Ombudsmen can make findings binding upon the trader;
- Industry EDR schemes are typically required to investigate and report on systemic problems, meaning that they not only provide solutions for individual disputes but also help resolve bigger problems at their source; and
- Industry EDR schemes keep comprehensive records and make detailed reports that assists the advancement of consumers' interests.

A trusted dispute resolution scheme will contribute to confidence in the property market and continuous improvement in conduct and consumer outcomes.

RECOMMENDATION 8. Introduce an industry-based external dispute resolution scheme covering complaints about property market professionals.



Affordability

The issue of affordability in the property market is complex, and relies on a range of policy and economic settings that probably do not fall within the scope of this review. For example, tax arrangements, housing supply arrangements and social security. We do not comment on these issues.

However, we would like to provide support for the Victorian Government's recent legislative reforms relating to vendor terms finance and rent-to-buy. This legislation tackles unfair models of property sales, that market themselves as ways to support affordability of home purchase. Our experience is that vendor terms contracts and rent-to-buy arrangements can be very risky – buyers may pay a lot of money to the seller, but can be evicted if they cannot afford to keep paying or cannot get a loan from a bank.

We are aware of new models of rent-to-buy that are being promoted, including with support of mainstream banks, as a way to address affordability.⁶ We consider that there are risks with these models.⁷

We note that under the Victorian law reform, rent-to-buy agreement is still able to go ahead in cases where the contract is entered into by the Director of Housing or a registered housing association, or if the rent-to-buy arrangement meets prescribed requirements. These requirements include that any rent-to-buy payment must be placed in a trust, or special purpose account, until the sale is completed; and that the purchaser can terminate the sale deed any time before it becomes unconditional; and that the purchaser is entitled to a full refund of all money they have paid towards the purchase price within 60 days.


We consider that these are important safeguards. Any market innovation aimed at improving affordability must be balanced with adequate safeguards to ensure a purchaser is not unfairly taken advantage of.

RECOMMENDATION 9. Maintain existing safeguards relating to rent-to-buy as an important measure to ensure market innovations aimed at improving affordability are safe.

Please contact us on 03 9670 5088 or at info@consumeraction.org.au if you would like to discuss this submission further.

Yours faithfully,

CONSUMER ACTION LAW CENTRE



Gerard Brody
Chief Executive Officer

⁶ E.g. Own Home (supported by Commonwealth Bank) <https://www.ownhome.com/>

⁷ See AFR, 20 March 2022, <https://www.afr.com/property/residential/banks-split-over-rent-to-own-as-a-housing-affordability-fix-20220308-p5a2xb>