

The Real Estate Institute of Australia

Submission to SCOCA on Australian Consumer Law

The Real Estate Institute of Australia (REIA) welcomes the opportunity to make a submission to SCOCA on Australian Consumer Law and in particular to comment on the Discussion Paper “An Australian Consumer Law – Fair Markets, Confident Consumers”.

The 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 around 80% of real estate agencies are collectively represented. The real estate industry employs approximately 77,000 persons. The REIA represents an important element of the broader property and construction sector which together makes a significant contribution to Australia’s social climate and economic development. The instrumental role that the sector plays in the economic well being of Australia is recognised by the Government in its two recent packages aimed at stimulating growth in the current economic downturn.

The REIA has made two submissions on the subject of consumer law in the past two years – an initial submission to the Productivity Commission’s review of Australia’s Consumer Protection Framework and then a response to the Commission’s Draft Report.

In this submission the REIA will summarise the position it has articulated in its earlier submissions and will comment on specifics raised in the Treasury Discussion Paper.

The REIA in its submission to the Commission said that the current consumer protection framework was unnecessarily complicated and should be improved by:

- Removing gaps
- Improving consistency
- Reducing duplication
- Reducing red tape.

REIA favoured the progressive establishment of consistent nationwide laws and strong national regulators to deal with consumer and business issues where appropriate and practical. The REIA was thus supportive of the Commission’s recommendation in its Draft Report for a national approach to the modernisation of consumer laws and their policy framework.

Whilst supportive of the overall direction, the REIA noted that Draft Report could be enhanced by:

- recommending the inclusion of a charter of consumer rights and responsibilities as part of the common consumer protection objectives
- specifically nominating real estate as a priority candidate for nationalisation

- recommending that property investment advisers be nationally regulated under the auspices of ASIC
- recommending the maintenance or enhancement of existing protections for small business under a generic consumer policy framework
- recommending that, in addition to the already proposed voting structure under MCCA, that consumer policy issues be transferred to the Australian Government where all States and Territories vote to that effect
- noting the importance of rigorous stakeholder consultation before proceeding with the inclusion of an 'unfair contracts' provision within the generic consumer policy law
- proposing that any centralised complaints re-direction facility screen out obviously frivolous complaints at the first point of contact
- proposing that industry associations be granted access to data held in the national consumer complaints database (AUZSHARE)
- proposing that those prosecuted under a civil penalty regime retain an ability to appeal these penalties to the courts, at the risk of greater penalties being applied, and that there should also be civil penalties for consumers found to be making frivolous complaints which result in unnecessary costs for affected businesses
- proposing to extend the stakeholder feedback role in the reporting process to invite comments on the performance of the generic consumer law, the national regulator, MCCA and the COAG reform process.

With regard to the Discussion Paper, REIA notes the discussion on "cooling-off periods" for door-to-door trading (pages 69 to 72) including the EU approach of extending and harmonising the period to 14 days. The REIA whilst acknowledging the inherent advantages of a uniform approach stresses that real estate transactions are unlike other commercial dealings and requests that this is recognised in any proposed outcome.

The differences in services provided by a real estate agent and the supplier of other goods or services can be summarised as:

- Unlike other service contracts which bind a consumer to an immediate outcome the sale of real estate has a considerable lead time before signing an agency agreement and advertising a property for sale yet alone securing a sale. Depending on the jurisdiction building, pest and energy efficiency inspections may be required which can take a week or more to organise. Similarly statements from the suppliers of utilities and, in the case of units, minutes and financial statements from body corporate managers are required before a property is marketed.
- Unlike other non-property services an agent's fee/commission is not payable unless a buyer is found and even then does not occur until settlement occurs on the property - usually months after an agreement to list a property.
- A sale can only occur if the seller signs a contract, separate to the listing agreement, for the sale once a buyer has been found. Again, even in a very quick sale this would occur a minimum of two weeks after an agreement to list a property.
- Overall, the very nature of real estate marketing and sale provides a natural cooling-off period for a seller to reconsider a service contract with an agent.

To impose a 10 or 14 day cooling off period for real estate would create an unnecessary delay in the pre-marketing and marketing activities at no advantage to the seller.

Current state legislation in recognising these differences makes special provisions for residential agency agreements.

In New South Wales, for example, the Fair Trading Act has a five day cooling off period for direct commerce contracts ensuing from door-to-door trading. Whereas for residential agency agreements the Property Stock and Business Agents Act provides for a one day cooling-off period unless a weekend is involved.

In view of the complex nature of this issue as outlined above REIA formally requests an opportunity to meet with you to discuss the development of a sensible, practical and effective solution that is satisfactory to you ,the consumer and our members.