



ALPA

Submission

Consumer Property Acts Review Issues Paper No.1

To:

Consumer Property Acts Review
Policy and Legislation Branch
Consumer Affairs Victoria
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15/3/16

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ALPA General Introduction

The Australian Livestock & Property Agents Association Ltd (**ALPA**) submission is in response to Consumer Affairs Victoria undertaking a review on consumer property legislation with reference to the Estate Agents Act 1980, Owners Corporations Act 2006, Conveyancers Act 2006 and the Sale of Land Act 1962.

Our submission will contain our response on the Estate Agents Act 1980 and the Sale of Land Act 1962.

However, we don't believe that we have the experience or expertise to comment on the Owners Corporations Act 2006 and Conveyancers Act 2006.

Australian Livestock & Property Agents Association (ALPA)

ALPA is the national peak industry body for livestock and property agents.

ALPA represents more than 1,200 agency businesses across Australia. Collectively this group plays an important role in livestock, wool, merchandise and rural property sales and marketing.

ALPA members handle in excess of 97% of rural agency business Australia wide.

ALPA is one of the largest national organisations of small rural business men and women, relied on to protect the interests of agents and producers nationally.

ALPA national membership includes Elders, Landmark, Ruralco and private livestock agencies across Australia.

ALPA appreciates the opportunity to provide this submission to Consumer Affairs Victoria.

ALPA Comments

The viewpoints of ALPA and the Estate Agents Council (EAC) are of similar nature and we wish that our submission and the EAC submission be read consecutively.

1 Is the definition of an estate agent easy to understand and apply? How could it be improved?

We believe that the definition of an estate agent is easy to understand.

2 What problems have you experienced with unlicensed people who offer marketing or similar services to sellers or who run introduction or vetting services?

We have had issues with unlicensed people who offer similar services to licensed estate agents with particular reference to those who do not have trust accounts and no evidence of professional indemnity insurance.

3 Are there any persons or organisations that are inadvertently captured by or excluded from the need to be licensed as an estate agent?

Accountants and receiver managers often at times act to realise assets without being licensed.

4 Are there any types of sales and leasing schemes that should specifically be referred to in the definition of an estate agent and why would they be included?

No further additions needed and is appropriate as is.

5 Is the definition of conveyancing work sufficiently broad to capture all those who should be licensed? If not, how could it be amended?

ALPA will not be making a comment based on our experience or expertise in this area

6 What is your view as to the present training for estate agents and/or conveyancers? Are there any additional training requirements that should be mandated? Are any of the current requirements unnecessary?

ALPA has a strong view that compulsory CPD should not be mandated. ALPA believes that compulsory CPD should be done by the Principal or Officer in effective control. We also believe that the current laws regarding mutual recognition could be looked with the mindset that all states agree on mutual recognition rules.

7 What are the potential costs of mandating higher entry standards for estate agents and/or conveyancers?

There will be extra costs if higher entry standards are made mandatory. This could be funded through the Victorian Property Fund or by Consumer Affairs Victoria at no cost or a subsidised cost.

8 What are your views on the value and efficiency of the work experience requirements for conveyancers and estate agents?

ALPA has a strong view that people should not be entering the estate agent industry with little or no experience. A person should have relevant work experience with minimum times being served before applying for a full licence and the current work experience requirements satisfy this. Similar could be said for mutual recognition from another state.

9 What is your view about the need for CPD for estate agents and/or conveyancers? If CPD was required, what type of training should be mandated?
ALPA has a strong view that compulsory CPD should not be mandated. ALPA believes that compulsory CPD should be done by the Principal or Officer in effective control.

10 What are the costs of mandating CPD for all conveyancers and estate agents?
Costs for mandating CPD training could be covered or subsidised by the Victorian Property Fund, pursuant to the intent of the formation of the Victorian Property Fund.

11 What are your views on the current eligibility criteria for estate agents and conveyancers?
ALPA believes that the current eligibility criteria for estate agents are too lenient. Fixed cost short courses to be eliminated and new framework of education to be established.

12 What are the factors in favour of retaining the capacity for the BLA to grant permission to someone who is otherwise ineligible to hold a licence?
ALPA believes that special circumstance applications need to be examined by a qualified body.

13 What barriers, if any, should be established in relation to the permission application process?
Police checks and minimum education standards should be introduced in relation to the application process.

14 What are your views on the information required to be provided as part of the licensing process and what are the opportunities for red tape reduction?
While ALPA believes that red tape reduction can have benefits, we are of the strong opinion that any red tape reduction must never lead to reduced standards.

15 What would be the impact, if any, of removing the requirement for a conveyancer to obtain professional indemnity insurance as a licensing criterion and instead to prescribe it as a pre-condition for practise?
Professional Indemnity policy to practice is acceptable and should be based on a minimum of 5 million dollars.

16 What would be the impacts of mandating professional indemnity insurance for all estate agents?
ALPA believes mandating professional indemnity may be a positive thing for consumers as they would be covered by those in the industry who don't do the right thing either intentionally or non-intentionally.

17 Is it really necessary to prescribe in legislation a management approach that requires an estate agent or conveyancer to physically manage the day to day operations at each place of business? If not, what, if any, office management requirements should be prescribed?
ALPA is of the opinion that policies and procedures are necessary to ensure the obligations of the office licensee in charge are being met. This could mean remote

supervision however this would need to be investigated in depth to ensure the consumers' needs were protected and compliance was met.

18 How could obligations on officers in effective control be improved to better facilitate the proper conduct of estate agency work and office procedures?
Enforcement of the officer in effective control duties could be streamlined via enabling electronic conduct of estate agency work and office procedures. This could be enforced by the Business Licensing Authority.

19 What are the risks for persons licensed as estate agents in not having or not immediately replacing an 'officer in effective control' and should these be addressed in the Estate Agents Act?
Risks are ever present; however, an officer in charge lessens this due the responsibilities of their role in their organisation associated with compliance procedures and legislative adherence.

20 What options should be available to facilitate conveyancers taking a break and then re-joining the workforce?
ALPA believes that if someone has been out of the industry for more than two years, then a level of retraining may be necessary.

21 What issues, if any, would arise if a conveyancer's licence is cancelled if they fail to provide their annual statement and pay their annual licence fees at renewal?
ALPA doesn't have any issues however the obligations must be met in regards to compliance.

22 What would be the merits or otherwise in having some established principles about the role of estate agents in the Estate Agents Act and/or setting out the duties for the conduct of an estate agent in relation to sellers, buyers, landlords and tenants (i.e. would it clarify expectations about the role of the agent and their conduct)?
ALPA believes that having a conduct and ethics component of the Estate Agents Act outlining key roles and responsibilities of estate agents would have great merit however this would need to be written into the Act as it does not current have any guidelines in the act. Additional clauses in the Act could allow prosecution should there be a breach.

23 What additional information should be included in the Estate Agents Act about the role estate agents play in property management, including in respect of their duties and obligations to landlords and tenants?
The Landlord and tenant acts cover these duties and not the Estate Agent Act.

24 What sanctions should be in place for estate agents who display poor behaviour in the property management space (for example specific offences, limited licence)?
Breaches of the Act could be by way of a fine or licence suspension.

25 What are your views on the merits of clarifying and directly expressing in the Estate Agents Act the duties and obligations, if any, that an estate agent may hold towards buyers of property?

ALPA believes that having a conduct and ethics component of the Estate Agents Act outlining key roles and responsibilities of estate agents would have great merit however this would need to be written into the Act as it does not currently have any guidelines in the act. Buyers could be included to ensure all parties in real estate transactions are covered.

26 What would be the costs and benefits of regulating the conduct of estate agents in negotiating sales authorities and the content of those authorities?
ALPA does not believe that regulating sales authorities are necessary and no additional benefit to current situation envisaged.

27 What are your views on the current level of information disclosed by an estate agent to a client about commission, fees, rebates and other outgoings?
ALPA believes that the current laws on commission, fees, rebates and other outgoings are adequate.

28 What is your view of the appropriate consequence if an estate agent fails to meet the disclosure requirements? For example, should the estate agent be entitled to any commission or other moneys?
ALPA believes if the estate agent fails to meet the disclosure requirements then a fine or commission to be withheld may be a fair penalty depending on the seriousness of the breach.

29 Are there any circumstances where agreements between estate agents should be subject to disclosure requirements? If yes, please provide examples of potential detriment that disclosure could avoid?
ALPA is of the opinion that agreements between estate agents should not be subject to disclosure statements.

30 When should an estate agent disclose details of a person entitled to a commission? If the commission-sharing relationship arrangements change, what requirements of disclosure should apply?
ALPA believes that the current provisions are satisfactory.

31 What safeguards should be in place in circumstances where an estate agent or their representative or relative gains an interest in a property the agent is selling?
Section 55 of the estate agents act covers this.

32 What distinction, if any, should there be between the estate agent personally buying a property, or their representatives or relatives buying a property that is listed with the agency?
ALPA believes that there should be no distinction as the law applies to all so long as there is full disclosure prior to sale to all parties.

33 Are there any circumstances where rebates could be permitted (for example, with appropriate disclosure requirements)?
ALPA is of the opinion that rebates can be permitted as long as there is full disclosure prior to sale. Examples of this could be advertising and printing where the estate agent can negotiate rates beneficial to all parties.

34 What appropriate remedies or alternative approaches to prohibiting rebates could be considered?

ALPA does not believe remedies or alternative approaches to prohibiting rebates need be considered. Rebates can and are used by agents for many reasons and agents can be rewarded by their loyalty across different sectors (livestock, merchandise, real estate) which and can be passed onto their vendor clients.

35 Do the current arrangements in the Estate Agents Act sufficiently deal with rebates? In particular, should indirect benefits be included, and if so how should these be accounted for?

ALPA believes that the current legislation is sufficient.

36 Do the current professional conduct rules for conveyancers deal sufficiently with matters conveyancers should observe in the conduct of their functions?

ALPA will not be making a comment based on our experience or expertise in this area.

37 Are there changes or additions to the rules that should be considered? Should the rules align with relevant rules for legal practitioners wherever practicable?

ALPA will not be making a comment based on our experience or expertise in this area.

38 What regulation, if any, is required to deal with circumstances where a conveyancer is asked to pay, or offers to pay, a commission to a third party who refers a client to the conveyancer?

ALPA will not be making a comment based on our experience or expertise in this area.

39 Are the current costs disclosure provisions in the Conveyancers Act sufficient? If not, in what respect should they be amended? Should the costs disclosure required for conveyancers align with those for legal practitioners?

ALPA will not be making a comment based on our experience or expertise in this area.

40 What are your views about, and experience of, the current VCAT inquiry system? What are the opportunities to improve the VCAT process?

ALPA will not be making a comment based on our experience or expertise in this area.

41 Are the range of orders and penalties open to VCAT after conducting an inquiry sufficient and appropriate? If they are not, what changes would you recommend and why?

ALPA will not be making a comment based on our experience or expertise in this area.

42 What are the merits of the proposed approaches which could operate in conjunction with existing enforcement approaches?

ALPA will not be making a comment based on our experience or expertise in this area.

43 What additional suggestions do you have to address poor conduct?
ALPA will not be making a comment based on our experience or expertise in this area.

44 What factors should be considered as part of any review of penalties under the Estate Agents Act?
ALPA will not be making a comment based on our experience or expertise in this area.

45 What are your views on the overall effectiveness of the trust accounting requirements for estate agents and conveyancers?
ALPA believes that conveyancers should be brought under the Estate Agents Act.

46 In what circumstances would it be appropriate for estate agents to receive money from, or on behalf of, clients and hold that money on trust? What would be the potential risks of providing estate agents and conveyancers with greater flexibility to deposit trust money in accounts that pay interest to the parties to the transaction?
ALPA believes that the current system is working and should not change in reference to estate agents where funds currently are deposited into the Victorian Property Fund.

47 Why is it important that conveyancers continue to have the ability to handle transit money or controlled money accounts?
ALPA will not be making a comment based on our experience or expertise in this area.

48 What is your view about the appropriate sanction if an estate agent or conveyancer does not comply with the annual auditing requirements?
ALPA believes that if an estate agent doesn't comply with the annual audit requirements then they perhaps can face penalties.

49 How should offences relating to trust account deficiencies, misappropriation and deficient administration be framed for estate agents and conveyancers (i.e. what type of wrongdoing do we want to prevent)?
ALPA is of the opinion that the laws regarding trust account deficiencies be reviewed to ensure they are modernised into today's work practices and to prevent absconding and embezzlement.

50 How long should records be required to be retained once a conveyancing business closes, and with whom should this responsibility lie? What mechanisms should be in place so consumers can access documents of the closed business?
ALPA will not be making a comment.

51 Do you access public registers and if yes, for what purposes?
ALPA members from time to time do licence checks.

52 What is your view as to the required information for the registers, including whether information about ineligible persons should continue to be required?
ALPA will not be making a comment.

53 How do the current requirements for physically displaying the licence by estate agents and conveyancers assist consumers?

The public can access the public register and make informed decisions on if an estate agent is licensed.

54 Do you believe that the functions of the BLA are clear, and if not, how could the legislation be improved to clarify the BLA's role?

ALPA is of the belief that the functions of the Business Licencing Authority are clear and easily understood.

55 Do you believe the role of the Director of CAV is clear and the functions are sufficiently articulated?

ALPA is of the belief that the Directors of CAV's role is clear and functions are understood.

56 Are the powers given to the Director and inspectors under the relevant Acts sufficient?

ALPA understands that the powers given to the Director and inspectors are sufficient.

57 What are your views as to the role of and the objectives for the Estate Agents Council?

ALPA believes that the role and objectives of the EAC is to work closely with the Business Licensing Authority to enforce the Estate Agents act.

58 What do you think of the current basis for compensation claims against the VPF?

ALPA is of the opinion that the current basis for compensation claims against the Victorian Property Fund is valid.

59 Should funds from the VPF be put towards education and training for estate agents, conveyancers and owners corporation managers?

ALPA is in agreeance that funds from the Victorian Property Fund should be utilised for training for all those in the estate agents industry.

60 Under what circumstances should commission received by an unlicensed estate agent be returned to the client or the VPF?

ALPA is of the belief that commission from an unlicensed agent should be returned to the client and the fine goes to the VPF.

61 What should the purposes of the Estate Agents Act include?

ALPA will not be making a comment.

62 What are the opportunities for modernising the Estate Agents Act and the Conveyancers Act?

ALPA will not be making a comment.

63 What improvements can you identify to remove redundant provisions or duplication?

ALPA will not be making a comment.

For Questions 64 to 78 - ALPA will not be making a comment based on our experience or expertise in this area.

64 Are there benefits in aligning the eligibility requirements for an owners corporation manager to the extent practical with those of estate agents?

65 What are your views on whether owners corporation managers should be separately licensed or be part of an estate agent's licence?

66 Is it appropriate to extend the current regulatory criteria to include serious criminal offences?

67 What would be the benefits and costs of placing requirements on owners corporation managers to hold professional indemnity insurance as a condition of practise?

68 In your experience what is the current practice of owners corporation managers in relation to disclosure of commissions?

69 Do commissions and discounts have an adverse impact on premiums for insurance, and if so, how does this manifest?

70 What are the non-regulatory approaches that could be considered to ensure commissions and other payments do not distort the market?

71 What are the main concerns about unfair contract terms in management contracts?

72 Are there other types of unfair terms that should be considered? If so, what are they and how common are they? Why might they be unfair?

73 Should any distinction be drawn between the required contractual terms for initial and subsequent management contracts? If so, why? How would such a distinction be drawn?

74 What is your view as to contractual terms for the renewal of management contracts? For example, should there be any rules about terms such as automatic renewals or renewals at the prerogative of the manager only?

75 Are there other issues that require a regulatory response relating to long-term management contracts?

76 How can concerns about managers' influence on voting be addressed?

77 How can concerns about fraudulent financial conduct be addressed? Would it be preferable in the context of financial transparency and accountability to require separate owners corporation funds to be kept in separate accounts?

78 What proportion of managers still use pooled accounts, and what would be the realistic costs and time required to transition to the use of separate accounts? Where possible, include the basis for these estimates.

(END)



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