

## Legal Affairs and Community Safety Committee: Property Occupations Bill 2013

### Submissions 1-24

- 001 – [Unit Owners Association of Queensland Inc. Supplementary Submission](#)
- 002 – [Shopping Centre Council of Australia](#)
- 003 – [Urban Development Institute of Australia \(Qld\)](#)
- 004 – [Gregory Carroll](#)
- 005 – [Australian Resident Accommodation Managers' Association Inc.](#)
- 006 – [McGrath Estate Agents](#)
- 007 – [Real Estate Dynamics](#)
- 008 – [North Queensland Building and Pest Reports](#)
- 009 – [QIC Limited](#)
- 010 – [Real Estate Excellence Academy](#)
- 011 – [ADL Software](#)
- 012 – [Property Council of Australia, Queensland Division](#)
- 013 – [REA Group Limited](#)
- 014 – [RP Data](#)
- 015 – [Property Training Queensland](#)
- 016 – [Real Estate Institute of Queensland](#)
- 017 – [Queensland Law Society](#)
- 018 – [Bar Association of Queensland](#)
- 019 – [Tenants' Union of Queensland Inc.](#)
- 020 – [Jeff Ball](#)
- 021 – [News Corp Australia](#)
- 022 – [The Australian Property Institute, Queensland Division](#)
- 023 – [Caxton Legal Centre Inc.](#)
- 024 – [The Newspaper Works](#)

30 November 2013

Research Director  
Legal Affairs and Community Safety Committee  
Parliament House  
George Street  
Brisbane Qld 4000  
Email: [lacsc@parliament.qld.gov.au](mailto:lacsc@parliament.qld.gov.au)

Dear Sirs

**Re: Property Occupations Bill 2013**  
**Motor Dealers and Chattel Auctioneers Bill 2013**  
**Debt Collectors (Field Agents and Collection Agents) Bill 2013**  
**Agents Financial Administration Bill 2013**  
**Fair Trading Inspectors Bill 2013**

The Unit Owners Association Queensland (UOAQ) is the single organisation in Queensland representing both investment unit owners and residential unit owners. The UOAQ also recognises the importance of our members to the Queensland tourism industry. There are two distinct groups involved in unit ownership; the investment owners who provide the tourist accommodation, and the long term residential owners seeking an apartment complex that provides the amenity, level of health and safety commensurate with community expectations for places of permanent residence. Unfortunately these two groups of occupiers, in most circumstances, are incompatible; however, the body corporate (building owners) are required to safeguard the interests of both groups of owners. This dual responsibility has been displayed in the action taken by the body corporate against the Phoenician Caretaker/Letting Agent when they were revealed as defrauding unit owners of rental income by inflating letting commissions. Also the recent Carmel by the Sea prosecution of the Caretaker/Letting Agent for diversion of letting unit owner's funds to their own leaseback units. Thus the dual responsibility of the body corporate to oversee the conduct of the Caretaker and Letting Agent has been clearly demonstrated. Moreover, the body corporate, not the letting agent, own the building.

#### Submission

The UOAQ has been concerned for many years at the lack of disclosure and transparency requirements of PAMDA, and has sought during the current review to have these concerns addressed.

Currently full payments from guests are not disclosed to unit owner clients, and rental revenue is frequently passed through associated companies of letting agents, subjected to significant commissions (around 25%) without disclosure of those commissions to the clients of the letting agent.

Letting agents make charges against rental revenue of clients without disclosing the mark up they have imposed on the actual cost incurred.

The proposal in the Bill to remove caps on commissions without adequate safeguards is a recipe for disaster for rental unit owners. The majority of rental unit owners are absentee owners both overseas and interstate. They have little or no knowledge of market value commissions and the letting agent has a vested interest in achieving the highest possible commission rate and this is without the pyramid commissions currently being applied by travel agents and letting agents where 12% legislated commission rates are being jacked to 25% by dishonest letting agents.

The further proposal in the legislation to make letting agents NOT responsible to the body corporate removes the last line of protection for rental unit owners from unscrupulous letting agents.

As explained above, the body corporate has a dual responsibility to rental unit owners and residential unit owners, and body corporate committees usually have at least one absentee rental owner representing the interests of rental owners. The standard of visitor accommodation constitutes a major part of the longer term memory of the visitor/tourist experience, and certainly is one of the major subjects of recommendation to friends and associates. Thus the standard of accommodation has considerable impact on new and repeat tourism business. The body corporate committee through the rental owner representative ensures that the rental agent as part of his caretaking duties performs to the required standard of presentation of the complex.

This safeguard will become increasingly important if as proposed in the Bill, rental agents are to be permitted to service more than one building, and will not be required to live within the building.

The UOAQ has serious reservations as to the service levels of tourists if the letting agent is not accommodated on site. Moreover, the enforcement of by-laws and proper conduct of visitors and residents, currently the responsibility of letting agents, has not been addressed in the Bill.

Commensurate disclosure and transparency provisions of the above mentioned legislation is essential to provide greater consumer protection to owners of properties involved.

Wayne Stevens  
President

30 November 2013

Mr. Jarrod Bleijie  
Attorney General  
GPO Box 149  
Brisbane QLD 4001

Dear Jarrod

The attached document provides clear evidence of deliberate miss interpretation of the BCCM Act to the disadvantage of unit owners perpetrated by experienced and respected industry professionals, by incorrectly applying the Accommodation Module to access 25 year Management Rights benefits delivering an increased sale reward. This practice has been constantly complained of by UOAQ to Government and is part of its submissions in the current Management Rights review.

At Part 2 Disclosure Statement, the Regulation module to apply to the scheme is Accommodation module.

At Part 4 under Development it states:

*"It is intended that a residential apartment building will be constructed on the land."*

and under Use and maintenance of lots and Scheme Land:

*"The scheme is intended to operate as a residential community.*

*All lots in the scheme are to be used for residential purposes."*

For the Accommodation module to apply to a scheme the module states:

3 Application of this regulation—Act, s 21 [SM, s 3]

(1) This regulation is a regulation module for the Act.

(2) For this regulation to apply to a community titles scheme—

(a) the lots included in the scheme must be predominantly accommodation lots;

(3) accommodation lot means a lot that is either or both of the following—

(a) the subject of a lease or letting for accommodation for long or short term residential purposes, or immediately available to be the subject of a lease or letting for accommodation for long or short term residential purposes

(b) part of a hotel.

It seems clear that the Standard module should apply to the V77 Community Title Scheme.

There is continuing concern within the UOAQ regarding the miss classification of modules by developers and the inappropriate movement from Standard to Accommodation modules through mischievous endeavours of Caretakers on unknowing owners, and the lack of clarity by the Commissioner of BCCM to insure that the intension of the legislation in this area is respected. I attach pervious statement made by UOAQ on this topic for your information.

The UOAQ calls on the Government to immediately take steps to prevent the continuing miss classification of Community Title Schemes for the inappropriate purpose of accessing the ability to determine 25 year Management Rights agreements.

Last week The Agents Bills Team circulated a document with the subject:  
Introduction into the Queensland Parliament, Bills to split the Property Agents and Motor Dealers Act 2000 into four separate Acts - please note these Bills have not yet been debated or passed by the Queensland Parliament.

That document included your introductory speech to Parliament that detailed the following inclusions:

“The bill removes the requirement for a resident letting agent to satisfy the chief executive that they have body corporate approval and that they will live onsite to be eligible for a licence. In addition, under the bill resident letting agents will no longer be limited to managing only one building complex.”

“The government has worked closely with industry and peak stakeholder bodies to identify and implement new red tape reduction measures.

As President of The Unit Owners Association of Queensland, the association regarded as the peak stakeholder representing unit owners since 1978, I can state that your statement of working with peak stakeholder bodies is at best an untruth and at worst misleading the Parliament. No consultation or discussion has taken place with our Association on these topics, to the contrary, my Association recently sought clarification on the progress of the ongoing Management Rights Review, and were advised that the Ministers priority for the new year was Lot Entitlements and that the continuing review of Management Rights would follow later next year. We now find 2 fundamental components of Management Rights in on site living and limiting management to a single complex are being introduced unannounced.

The UOAQ seeks to prevent any amendment to the BCCM Act without full and appropriate consultation with UOAQ.

Yours sincerely.

Wayne Stevens  
President

cc. [iacsc@parliament.qld.gov.au](mailto:iacsc@parliament.qld.gov.au)

# DISCLOSURE MEMORANDUM

Proposed Lot

- in -

**'V77'**

77 Victoria Street, West End

## DISCLOSURE MEMORANDUM

'V77', 77 Victoria Street, West End, Queensland

---

<b>SELLER</b>	Name: Victoria Street Projects Pty Ltd ACN 164197924
	Address: c/- 1 Musgrave Rd , Red Hill Qld , 4059
<b>BUYER</b>	Name:
	Address:
<b>LAND (TO BE RECONFIGURED)</b>	Lots 6 & 7 on RP 10935 and Lot 20 on RP 847540, County Stanley, Parish, South Brisbane, to be reconfigured by the Building Format Plan.
<b>LOT SOLD</b>	Proposed <b>Lot</b> identified on the Draft Plan in <b>Part 5</b> .

---

## CONTENTS

Words and expressions defined in the Contract have the same meaning in this Disclosure Memorandum. This Disclosure Memorandum consists of the following documents:

<b>PART</b>	<b>DOCUMENT</b>
1.	Buyer's receipt
2.	Statutory disclosure statement - section 213 BCCM Act and Section 21 Land Sales Act;
3.	Statutory disclosure statement - section 219 BCCM Act – for Power of Attorney;
4.	Development Summary;
5.	Draft Plan reconfiguring the Land into lots and common property in the Scheme;
6.	Estimated budgets, lot entitlements and annual contributions for first year;
7.	Terms of engagement of Body Corporate Manager;
8.	Terms of proposed authorisation of a person as letting agent (if any);
9.	Terms of proposed authorisation of a person as service contractors (if any);
10.	First Community Management Statement;
11.	Body Corporate Assets
12.	Details of other agreements, if any, to be entered by the body corporate for the Scheme;
13.	Details of the easements, if any, which will affect the common property; and
14.	Schedule of Finishes, Fittings and Specifications.

## Part 1

### Buyer's Receipt

---

The Buyer and Guarantor/s acknowledge receiving this Disclosure Memorandum (including the documents attached to it as listed on the previous contents page before signing the contract to buy the Lot sold (which incorporates the guarantee by the Guarantor/s).

Dated \_\_\_\_\_ 2013

Buyer

^ \_\_\_\_\_  
Buyer

^ \_\_\_\_\_  
Buyer

Guarantor

^ \_\_\_\_\_  
Guarantor

^ \_\_\_\_\_  
Guarantor

**Note:** The Seller is to sign the Statutory Disclosure Statement (section 213 BCCM Act) in **Part 2** before the Buyer signs the acknowledgement.

## Part 2

Statutory Disclosure Statement – Section 213 BCCM Act and Section 21 Land Sales Act

### **DISCLOSURE STATEMENT**

*Body Corporate and Community Management Act 1997 - Section 213  
Land Sales Act 1984 - Section 21*

<b>Proposed Lot</b>	The proposed lots being purchased in the V77 Community Title Scheme is identified at the beginning of the Disclosure Memorandum of which this disclosure statement forms part.
<b>Seller</b>	Name: Victoria Street Projects Pty Ltd ACN 164197924 Address: c/- 1 Musgrave Rd, Red Hill Qld, 4059
<b>Buyer</b>	The name and address of the Buyer is identified at the beginning of the Disclosure Memorandum of which this disclosure statement forms part.
<b>Body corporate contributions</b> section 213(2)(a)	The amount of annual contributions (for the first year after the establishment of V77 Community Title Scheme) reasonably expected to be payable to the body corporate by the owner of the Proposed Lot are set out in <b>Part 6</b> .
<b>Body corporate contracts</b> section 213(2)(b)	Details of the proposed engagement of a person as a body corporate manager or service contractor for the scheme, proposed to be entered into after the establishment of the scheme, are as follows: <ul style="list-style-type: none"> <li>(a) the terms of the engagement - copies the proposed engagements are in <b>Part 7</b> and <b>Part 8</b> of this Disclosure Memorandum document and form part of this disclosure statement;</li> <li>(b) the estimated cost of the engagements to the body corporate - are in <b>Part 6</b> of this Disclosure Memorandum document and form part of this disclosure statement;</li> <li>(c) the proportion of the cost to be borne by the owner of the proposed lot for the first year of the relevant engagement - are in <b>Part 6</b> of this Disclosure Memorandum document and form part of this disclosure statement.</li> </ul>
<b>Letting agent authorisation</b> section 213(2)(c)	The proposed letting agent authorisation is in <b>Part 8</b> of this Disclosure Memorandum and forms part of this disclosure statement.
<b>Body corporate assets</b> section 213(2)(d)	Details of the body corporate assets proposed to be acquired by the body corporate after the establishment of the scheme – are in <b>Part 11</b> of this Disclosure Memorandum document and forms part of this disclosure statement.
<b>Proposed community management statement</b> section 213(2)(e)	The proposed community management statement for the scheme is in <b>Part 10</b> of this Disclosure Memorandum document and forms part of this disclosure statement.

<b>Regulation module to apply to the scheme</b> section 213(2)(f)	Accommodation module.
<b>Other matters prescribed under the regulation module</b> section 213(2)(g)	Nil
<b>Representation as to title</b> section 21 <i>Land Sales Act</i>	The Seller or its agent has made or offered to the prospective Buyer or its agents a representation promise or term that an indefeasible title for the lot in question will be created on the recording of the particulars of the lot in the Freehold Register.
<b>Other matters prescribed by</b> section 21 <i>Land Sales Act</i>	Nil
<b>Power of Attorney</b> section 219(1)	The Seller discloses that it requires the Buyer to give the Seller a power of attorney in accordance with the statement in <b>Part 3</b> of the Disclosure Memorandum.

**Signing by Seller**

.....  
 Signature of person authorised by the Seller  
 Dated ...../...../2013

## Part 3

### Statutory Disclosure Statement – Section 219 BCCM Act- Power of Attorney

---

1. Pursuant to clause 8.3 of the contract of sale for the Proposed Lot, the Buyer gives to the Seller a limited power of attorney to vote at meetings of the Body Corporate.
2. The power of attorney may only be exercised by a duly authorised corporate representative of the Seller.
3. The power of attorney may be exercised only to vote in favour of a resolution for:
  - (a) authorising or ratifying the entry by the Body Corporate into agreements and deeds in terms substantially the same as the drafts contained in the Disclosure Memorandum as amended from time to time with a party or parties approved by the original owner;
  - (b) adopting the Proposed CMS contained in the Disclosure Memorandum and any variations or new CMS required as a consequence of any changes the original owner considers desirable or necessary where those variations do not materially prejudice me/us;
  - (c) authorising any variation in the explanation of development of the Land contained in the Proposed CMS where that variation will not materially prejudice me/us;
  - (d) adopting the by-laws substantially the same as those included in the or the Proposed CMS contained in the Disclosure Memorandum as amended from time to time and to make variations to the by-laws as the original owner considers desirable or necessary where those variations do not materially prejudice me/us;
  - (e) the fixing, adoption, variation or ratification (as the case may be) of budgets or of contributions to be levied by the Body Corporate under the *BCCM Act*;
  - (f) the composition and election of members of the Committee of the Body Corporate for the Scheme;
  - (g) the election of a member of a Committee of the Body Corporate to be the Body Corporate's representative as required pursuant to the terms of the BMS;
  - (h) adopting a resolution that there be no prohibition or restriction of the use of proxies by the original owner;
  - (i) authorising or ratifying the entry by the Body Corporate into agreement for the provision of services or utilities to the Body Corporate and the Scheme;
  - (j) authorising any transfer, lease, easement, licence, grant or allocation of exclusive use or occupation authority or other right over any of the Common Property or the Land;
  - (k) authorising any variation to the lot entitlements of any one or more lots in the Scheme other than the Lot, where that variation will not materially prejudice me/us;
  - (l) granting of an authority under a service contract or the regulation module for the Scheme to occupy Common Property;

- (m) adopting a resolution to acquire or lease any personal property that is required to facilitate the effective operation of the Body Corporate and the facilities provided for the use of owners and occupiers of lots in the Scheme;
- (n) approving the reconfiguration or amalgamation of any lots or Common Property in the Scheme or the Development (other than the Lot) and the recording of a new community management statement in relation to the reconfiguration or amalgamation;
- (o) adopting a resolution to acquire any additional land into the Scheme whether as a Lot or Common Property and the recording of a new community management statement in relation to that acquisition;
- (p) adopting a resolution to transfer or excise any land out of the Scheme and a recording of a new community management statement in relation to that transfer or excision;
- (q) the election of executive and ordinary members of the Committee of the Body Corporate and Body Corporate representatives;
- (r) authorising any easement or licence for construction purposes in favour of the original owner relating to the staging of constructions works;
- (s) the granting of consent to any appeal to be lodged under the *Sustainable Planning Act 2009* pursuant to section 60(7) of the *BCCM Act* consequent upon the Council failing or refusing to endorse a community management statement notation within 40 days after the community management statement or any new community management statement is submitted to the Council for endorsement;
- (t) authorising a request or consent to register a new community management statement for the Scheme reflecting any of the variations or matters referred to in paragraphs (a) to (t).

**AND DECLARE** that this power of attorney is to operate and be irrevocable for a period of one year after establishment of that scheme

4. The power of attorney expires one year after establishment of the Scheme.

---

**Signing by Seller**

.....  
Signature of person authorised by the Seller  
Dated ...../...../2013

## Part 4 - DEVELOPMENT STRUCTURE SUMMARY

V77

---

### Development

- 1 It is intended that a residential apartment building will be constructed on the Land.
- 2 It is proposed that the Land will be amalgamated and subdivided by a building format plan under the Accommodation Module and that, ultimately, the approximate number of lots developed in the Scheme will be 105 lots.
- 3 The recording of a first community management statement will create a body corporate (proposed to be called the Body Corporate for V77 Community Title Scheme).
- 4 The owners of the lots in the Scheme will be members of V77 Community Title Scheme.
- 5 It is intended that any car parks will be allocated to lots by way of exclusive use allocation.

### Use and maintenance of lots and Scheme Land

- 1 The Scheme is intended to operate as a residential community.
- 2 All lots in the Scheme are to be used for residential purposes .
- 3 As all lots in the Scheme will be standard format lots, owners of the lots will be responsible for maintenance of all areas within the lots.

### Management

- 4 It is intended that the Body Corporate will enter into:
  - (a) a management agreement for the engagement of a body corporate manager (refer to part 7 of the Disclosure Memorandum) for the Scheme;
  - (b) a Letting Authorisation Agreement (refer to Part 8 of the Disclosure Memorandum) for the Scheme; and
  - (c) a Service Contractor Agreement (refer to Part 9 of the Disclosure Memorandum) for the Scheme.

**Note:** *The summary above is not (and does not purport to be) exhaustive of matters it addresses, and does not (and does not purport to) address all matters relevant to the formation and operation of the body corporate or rights of owners of lots in a scheme.*

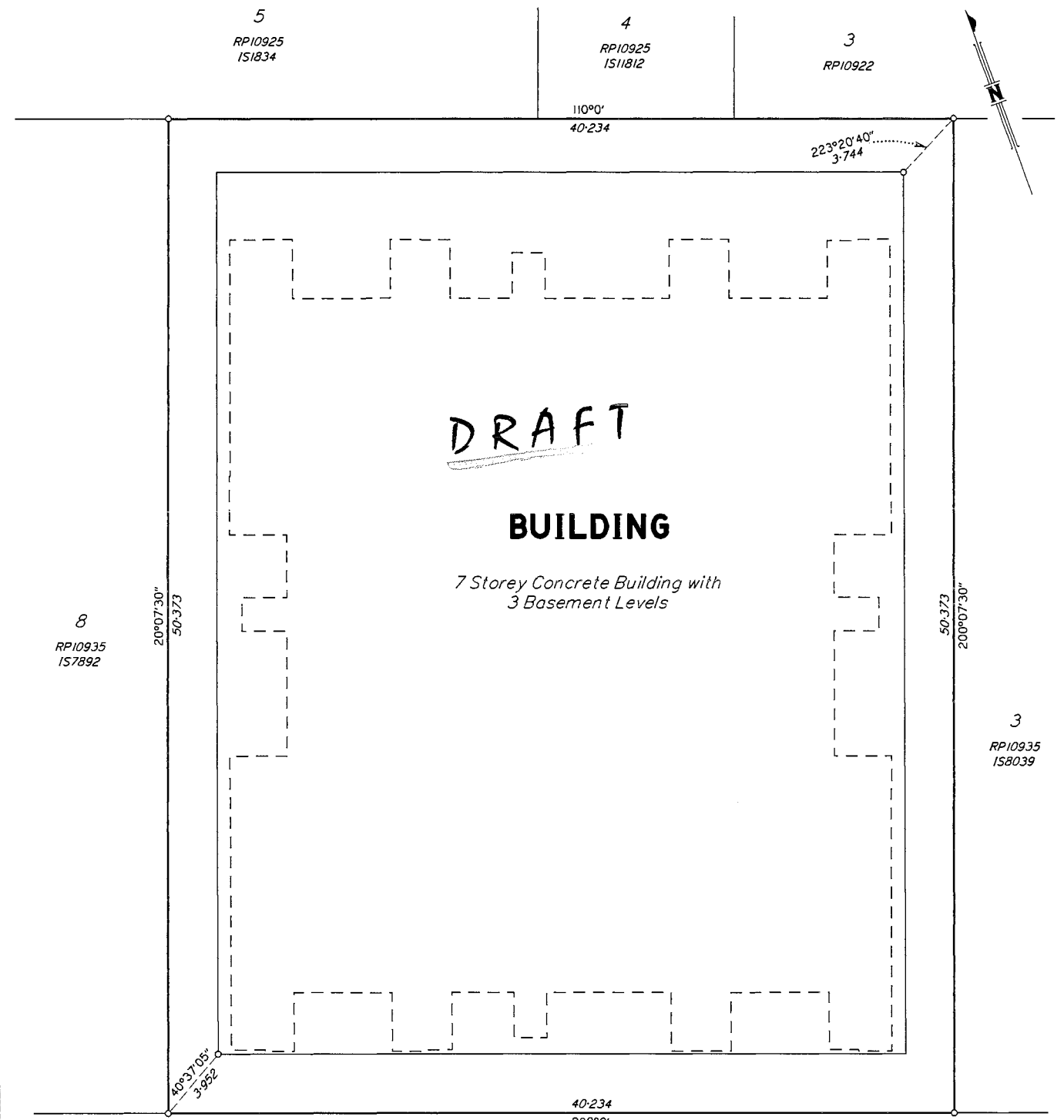
## Part 5

Draft Plan showing reconfiguration of the Land into lots and common property in the Scheme

---

The Seller discloses the attached plan:

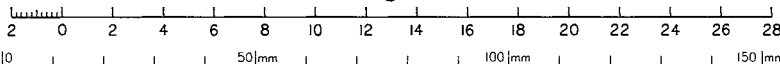
- (a) is subject to variation as set out in the Contract;
- (b) is intended only to represent an indicative and approximate development plan for V77 when completed and has been annexed for illustrative purposes only;
- (c) does not accurately fix or specify the location of the proposed Building or the boundaries within or outside the proposed Building all of which are subject to design changes, Council approvals and final survey following completion of construction and my ultimately differ from the attached plans.



Area of Base Parcel  
2027m<sup>2</sup>

**VICTORIA STREET**

Scale 1:200 - Lengths are in Metres.



Bennett & Francis PTY LTD (ACN (053 307 172)) hereby certify that the land comprised in this plan was surveyed by the corporation, by Phillip Anthony James POZZI, cadastral surveyor, for whose work the corporation accepts responsibility, and that the plan is accurate, that the said survey was performed in accordance with the Survey and Mapping Infrastructure Act 2003 and Surveyors Act 2003 and associated Regulations and Standards and that the said survey was completed on ---/---/---



Director  
Director  
Date

Plan of Lots 101-109, 201-216,  
301-316, 401-416, 501-516,  
601-616, 701-716 & CP

Cancelling Lots 6 & 7 on RP10935 & Lot 20 on RP847540

LOCAL BRISBANE CITY  
GOVERNMENT: COUNCIL LOCALITY: WEST END

Meridian: 1S187309

Survey Records: No

Scale: 1:200

Format: BUILDING

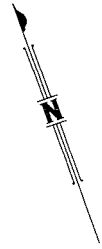
SP192426

<p style="text-align: center;">(Dealing No.)</p>	<b>WARNING : Folded or Mutilated Plans will not be accepted. Plans may be rolled. Information may not be placed in the outer margins.</b>																																
<p>5. Lodged by</p>  <p style="font-size: small;">(Include address, phone number, reference, and Lodger Code)</p>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th colspan="2" style="text-align: left;">6. Existing</th> <th colspan="3" style="text-align: left;">Created</th> </tr> <tr> <th style="width: 10%;">Title Reference</th> <th style="width: 30%;">Description</th> <th style="width: 20%;">New Lots</th> <th style="width: 10%;">Road</th> <th style="width: 30%;">Secondary Interests</th> </tr> <tr> <td>12145216</td> <td>Lot 6 on RP10935</td> <td>103-109, 206-214, 306-314, 406-414, 506-514, 606-614, 706-714 &amp; CP</td> <td></td> <td></td> </tr> <tr> <td>12145174</td> <td>Lot 7 on RP10935</td> <td>105-108, 208-212, 308-312, 408-412, 508-512, 608-612, 708-712 &amp; CP</td> <td></td> <td></td> </tr> <tr> <td>18422064</td> <td>Lot 20 on RP847540</td> <td>101-103, 109, 201-206, 214-216, 301-306, 314-316, 401-406, 414-416, 501-506, 514-516, 601-606, 614-616, 701-706, 714-716 &amp; CP</td> <td></td> <td></td> </tr> </table>	6. Existing		Created			Title Reference	Description	New Lots	Road	Secondary Interests	12145216	Lot 6 on RP10935	103-109, 206-214, 306-314, 406-414, 506-514, 606-614, 706-714 & CP			12145174	Lot 7 on RP10935	105-108, 208-212, 308-312, 408-412, 508-512, 608-612, 708-712 & CP			18422064	Lot 20 on RP847540	101-103, 109, 201-206, 214-216, 301-306, 314-316, 401-406, 414-416, 501-506, 514-516, 601-606, 614-616, 701-706, 714-716 & CP									
6. Existing		Created																															
Title Reference	Description	New Lots	Road	Secondary Interests																													
12145216	Lot 6 on RP10935	103-109, 206-214, 306-314, 406-414, 506-514, 606-614, 706-714 & CP																															
12145174	Lot 7 on RP10935	105-108, 208-212, 308-312, 408-412, 508-512, 608-612, 708-712 & CP																															
18422064	Lot 20 on RP847540	101-103, 109, 201-206, 214-216, 301-306, 314-316, 401-406, 414-416, 501-506, 514-516, 601-606, 614-616, 701-706, 714-716 & CP																															
<p>1. Certificate of Registered Owners or Lessees.</p> <p>I/We .....</p> <p>.....</p> <p>.....</p> <p>(Names in full)</p> <p>* as Registered Owners of this land agree to this plan and dedicate the Public Use Land as shown hereon in accordance with Section 50 of the Land Title Act 1994.</p> <p>* as Lessees of this land agree to this plan.</p> <p>.....</p> <p>Signature of *Registered Owners *Lessees</p>	<p style="text-align: center; font-size: 2em; font-weight: bold; opacity: 0.5;">DRAFT</p>																																
<p>* Rule out whichever is inapplicable</p>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 40%; font-size: x-small;">101-109, 201-216, 301-316, 401-416, 501-516, 601-616, 701-716 &amp; CP</td> <td style="width: 20%; text-align: center;">WSA 39</td> <td style="width: 40%;"></td> </tr> <tr> <td style="text-align: center;">Lots</td> <td style="text-align: center;">Orig</td> <td></td> </tr> <tr> <td colspan="3">7. Orig Grant Allocation :</td> </tr> <tr> <td colspan="3">8. Map Reference : 9543-33334</td> </tr> <tr> <td colspan="2">9. Parish : <b>SOUTH BRISBANE</b></td> <td rowspan="2">12. Building Format Plans only. I certify that : * As far as it is practical to determine, no part of the building shown on this plan encroaches onto adjoining lots or road; <del>* Part of the building shown on this plan encroaches onto adjoining lots and road</del></td> </tr> <tr> <td colspan="2">10. County : <b>Stanley</b></td> </tr> <tr> <td colspan="2">11. Passed &amp; Endorsed :</td> <td rowspan="4">13. Lodgement Fees : Survey Deposit \$ ..... Lodgement \$ ..... ..... New Titles \$ ..... Photocopy \$ ..... Postage \$ ..... TOTAL \$ .....</td> </tr> <tr> <td colspan="2">By : Date : Signed : Designation :</td> </tr> <tr> <td colspan="2">3. Plans with Community Management Statement :</td> </tr> <tr> <td colspan="2">4. References :</td> </tr> <tr> <td style="vertical-align: top; padding: 5px;"> <p>CMS Number :</p> <p>Name : <b>V77 CTS</b></p> </td> <td style="vertical-align: top; padding: 5px;"> <p>Dept File :</p> <p>Local Govt :</p> <p>Surveyor : <b>02831901</b></p> </td> <td style="vertical-align: top; padding: 5px;"> <p>Cadastral Surveyor/Director* Date</p> <p>*delete words not required</p> </td> </tr> <tr> <td colspan="2" style="vertical-align: top; padding: 5px;"> <p>14. Insert Plan Number</p> <p style="font-size: 1.2em; font-weight: bold; text-align: right;">SP192426</p> </td> <td></td> </tr> </table>	101-109, 201-216, 301-316, 401-416, 501-516, 601-616, 701-716 & CP	WSA 39		Lots	Orig		7. Orig Grant Allocation :			8. Map Reference : 9543-33334			9. Parish : <b>SOUTH BRISBANE</b>		12. Building Format Plans only. I certify that : * As far as it is practical to determine, no part of the building shown on this plan encroaches onto adjoining lots or road; <del>* Part of the building shown on this plan encroaches onto adjoining lots and road</del>	10. County : <b>Stanley</b>		11. Passed & Endorsed :		13. Lodgement Fees : Survey Deposit \$ ..... Lodgement \$ ..... ..... New Titles \$ ..... Photocopy \$ ..... Postage \$ ..... TOTAL \$ .....	By : Date : Signed : Designation :		3. Plans with Community Management Statement :		4. References :		<p>CMS Number :</p> <p>Name : <b>V77 CTS</b></p>	<p>Dept File :</p> <p>Local Govt :</p> <p>Surveyor : <b>02831901</b></p>	<p>Cadastral Surveyor/Director* Date</p> <p>*delete words not required</p>	<p>14. Insert Plan Number</p> <p style="font-size: 1.2em; font-weight: bold; text-align: right;">SP192426</p>		
101-109, 201-216, 301-316, 401-416, 501-516, 601-616, 701-716 & CP	WSA 39																																
Lots	Orig																																
7. Orig Grant Allocation :																																	
8. Map Reference : 9543-33334																																	
9. Parish : <b>SOUTH BRISBANE</b>		12. Building Format Plans only. I certify that : * As far as it is practical to determine, no part of the building shown on this plan encroaches onto adjoining lots or road; <del>* Part of the building shown on this plan encroaches onto adjoining lots and road</del>																															
10. County : <b>Stanley</b>																																	
11. Passed & Endorsed :		13. Lodgement Fees : Survey Deposit \$ ..... Lodgement \$ ..... ..... New Titles \$ ..... Photocopy \$ ..... Postage \$ ..... TOTAL \$ .....																															
By : Date : Signed : Designation :																																	
3. Plans with Community Management Statement :																																	
4. References :																																	
<p>CMS Number :</p> <p>Name : <b>V77 CTS</b></p>	<p>Dept File :</p> <p>Local Govt :</p> <p>Surveyor : <b>02831901</b></p>	<p>Cadastral Surveyor/Director* Date</p> <p>*delete words not required</p>																															
<p>14. Insert Plan Number</p> <p style="font-size: 1.2em; font-weight: bold; text-align: right;">SP192426</p>																																	

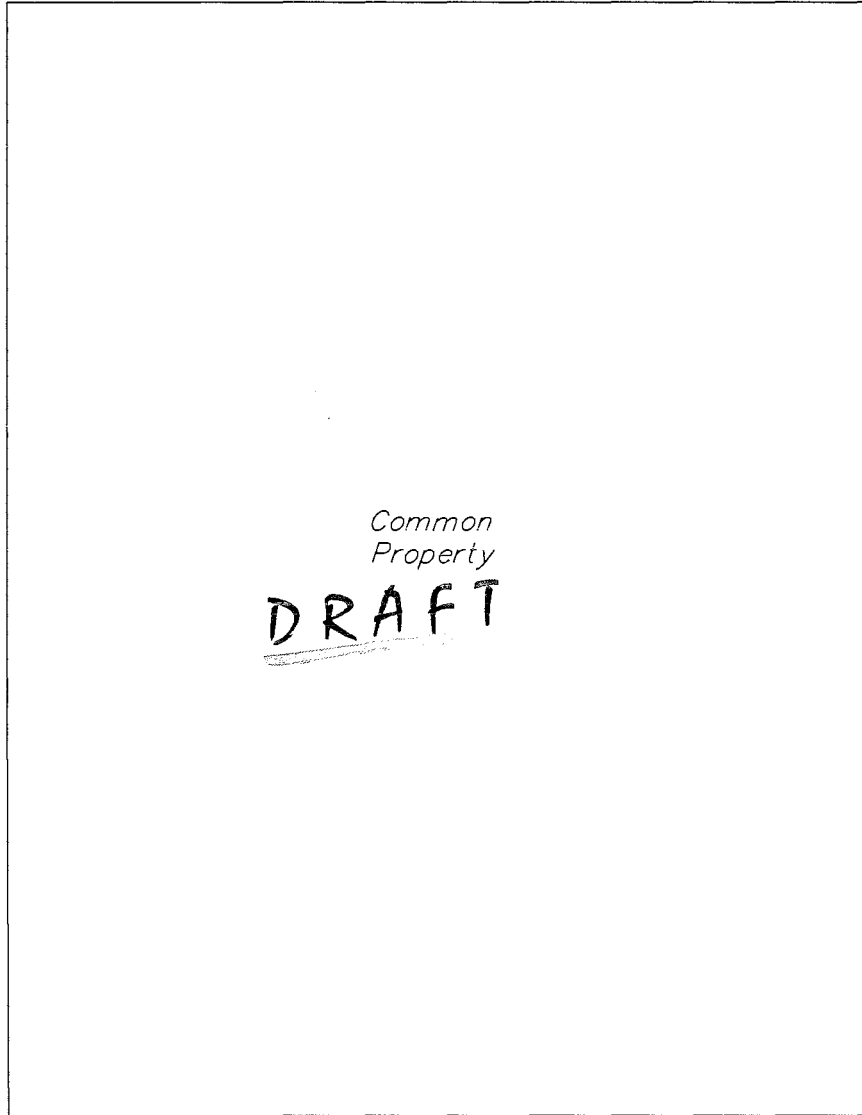
ADDITIONAL SHEET

Level A

Basement 3



*Common Property*



*Common Property*

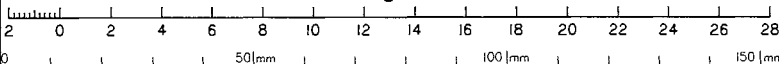
*Common Property*

*Common Property*

**DRAFT**

*Common Property*

Scale 1:200 - Lengths are in Metres.

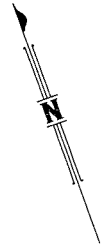


State copyright reserved.

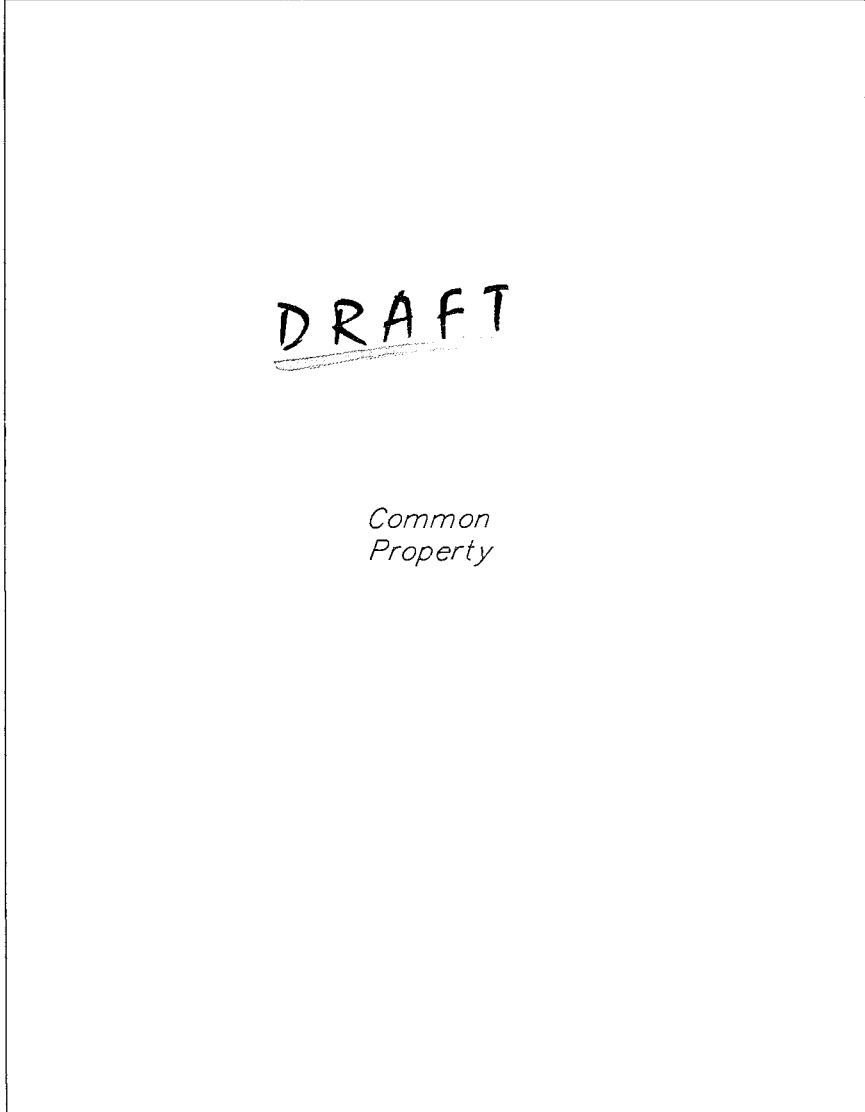
Insert Plan Number **SP192426**

Level B

Basement 2



*Common Property*



DRAFT

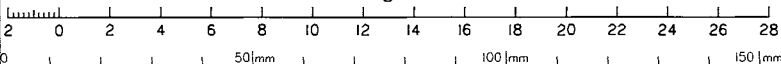
*Common Property*

*Common Property*

*Common Property*

*Common Property*

Scale 1:200 - Lengths are in Metres.

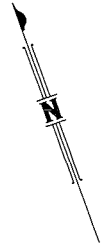


State copyright reserved.

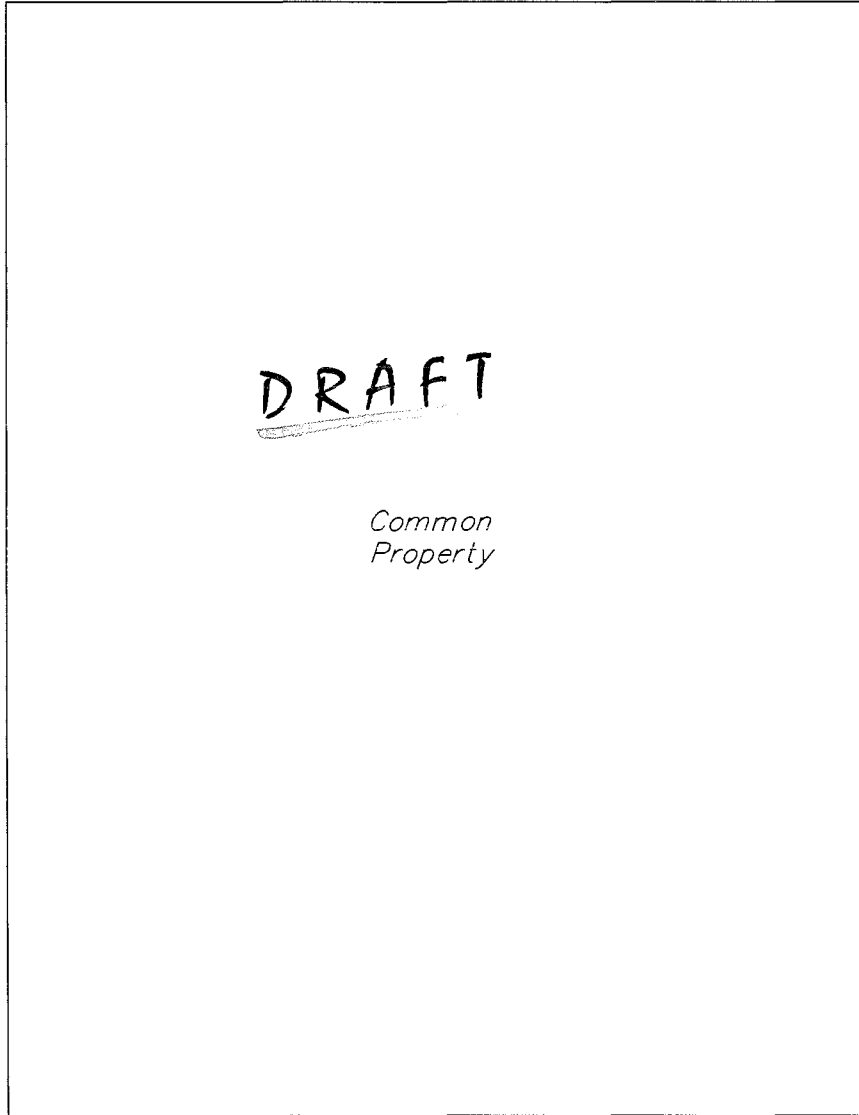
Insert Plan Number **SP192426**

Level C

Basement I



*Common Property*



DRAFT

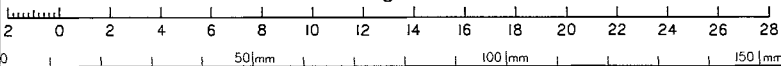
*Common Property*

*Common Property*

*Common Property*

*Common Property*

Scale 1:200 - Lengths are in Metres.

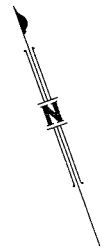


State copyright reserved.

Insert Plan Number **SP192426**

Level D

Podium



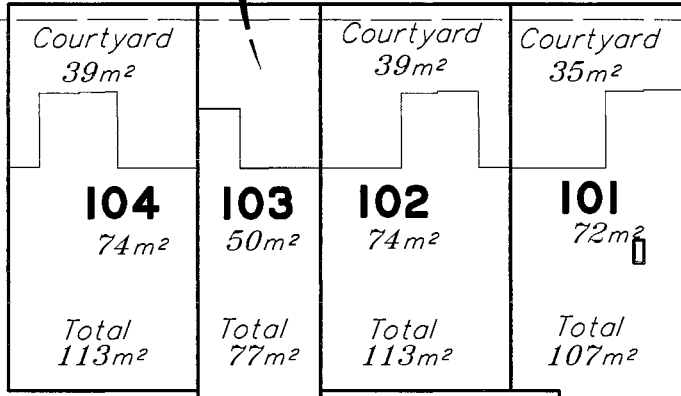
Common Property

Courtyard

27m<sup>2</sup>

Common Property

Level Below



Courtyard

10m<sup>2</sup>

**105**

53m<sup>2</sup>

Total 63m<sup>2</sup>

Courtyard

11m<sup>2</sup>

**106**

52m<sup>2</sup>

Total 63m<sup>2</sup>

Courtyard

10m<sup>2</sup>

**107**

53m<sup>2</sup>

Total 63m<sup>2</sup>

Common Property

**108**

99m<sup>2</sup>

Total 119m<sup>2</sup>

**109**

114m<sup>2</sup>

Total 135m<sup>2</sup>

Level Below

Courtyard  
20m<sup>2</sup>

Courtyard  
21m<sup>2</sup>

Common Property

Stairs

Terrace

Services

Switch Room

Plant Room

Lifts

Stairs

Lobby

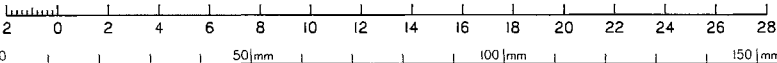
Plant Room

Stairs

Common Property

**DRAFT**

Scale 1:200 - Lengths are in Metres.



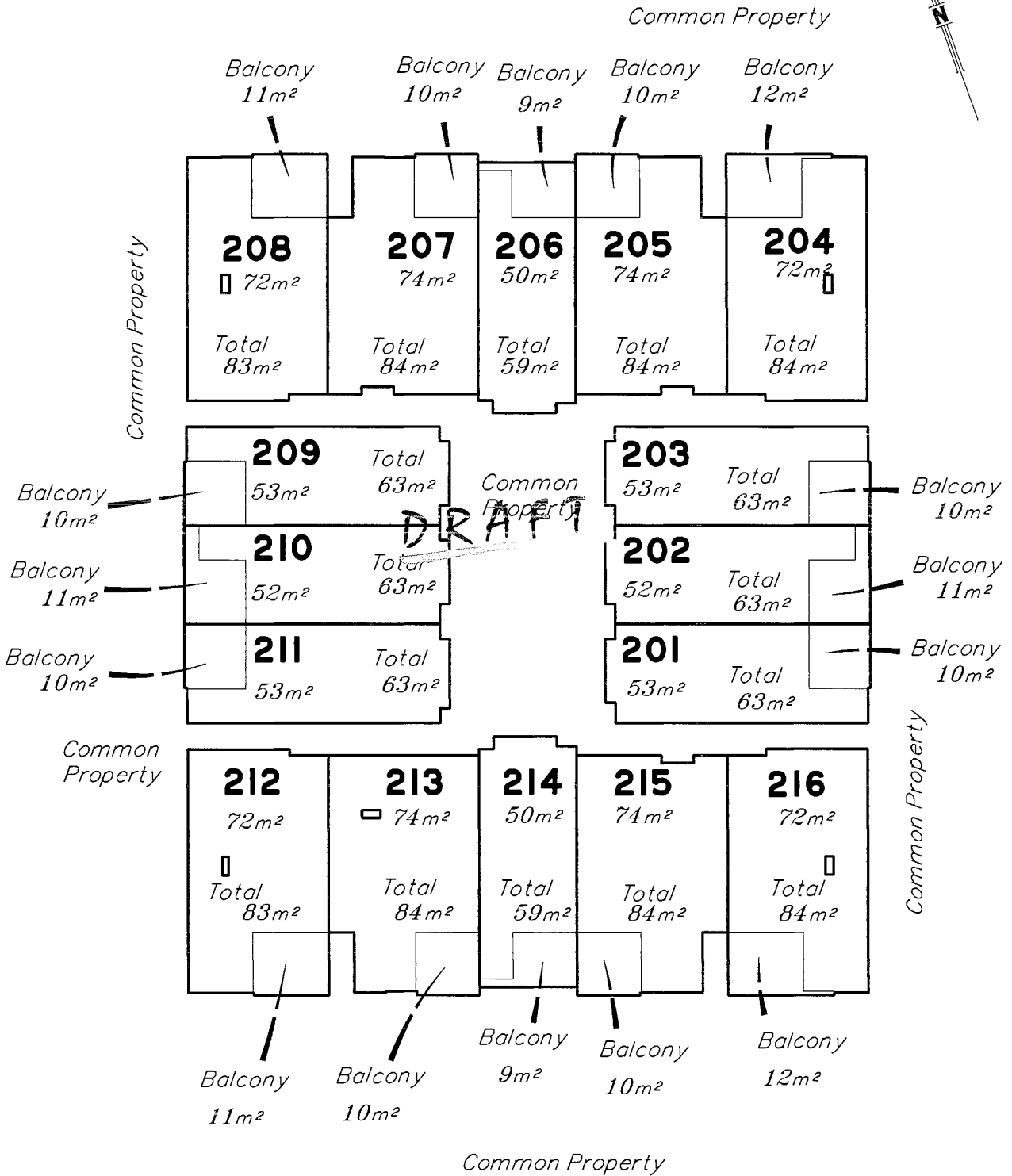
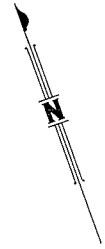
State copyright reserved.

Insert Plan Number

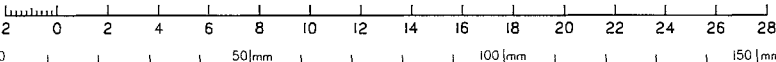
SP192426

Level E

Level L



Scale 1:200 - Lengths are in Metres.

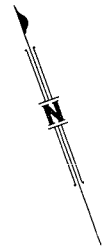


State copyright reserved.

Insert Plan Number **SP192426**

Level F

Level 2



Common Property

Balcony  
11m<sup>2</sup>

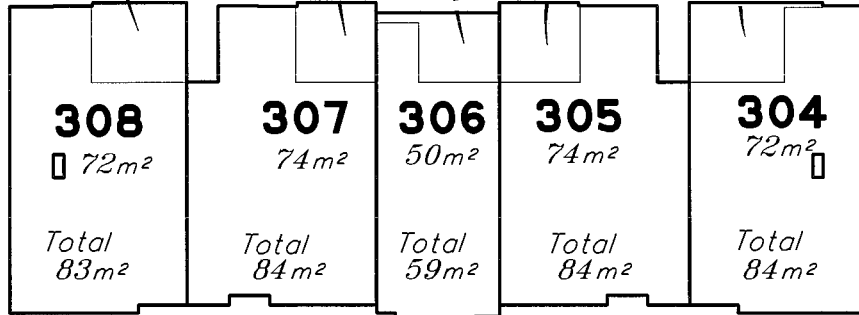
Balcony  
10m<sup>2</sup>

Balcony  
9m<sup>2</sup>

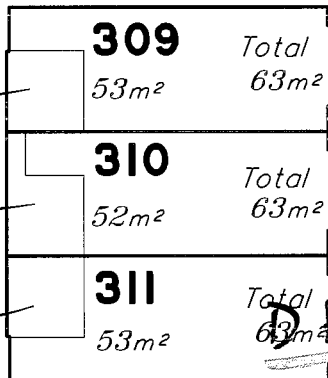
Balcony  
10m<sup>2</sup>

Balcony  
12m<sup>2</sup>

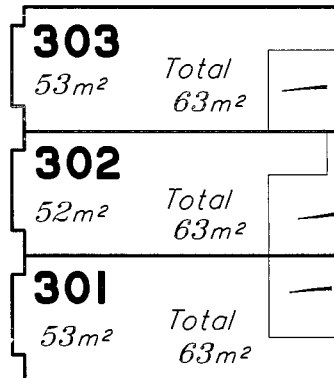
Common Property



Total



Common Property



Balcony  
10m<sup>2</sup>

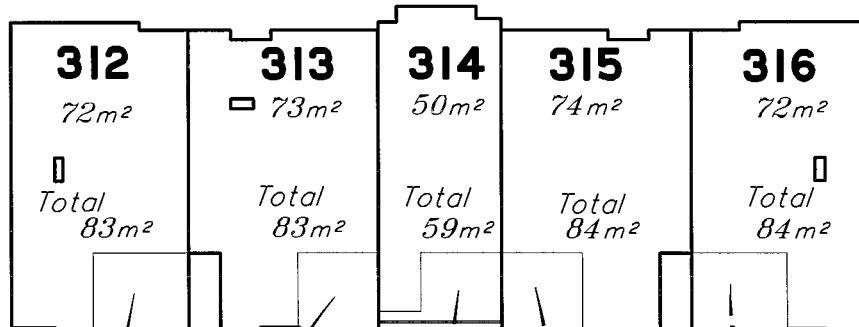
Balcony  
11m<sup>2</sup>

Balcony  
10m<sup>2</sup>

Balcony  
10m<sup>2</sup>

Balcony  
11m<sup>2</sup>

Balcony  
10m<sup>2</sup>



Common Property

Balcony  
11m<sup>2</sup>

Balcony  
10m<sup>2</sup>

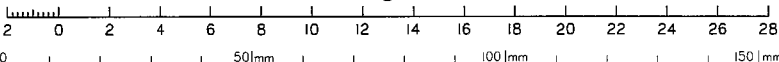
Balcony  
9m<sup>2</sup>

Balcony  
10m<sup>2</sup>

Balcony  
12m<sup>2</sup>

Common Property

Scale 1:200 - Lengths are in Metres.

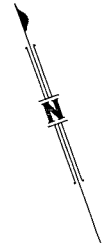


State copyright reserved.

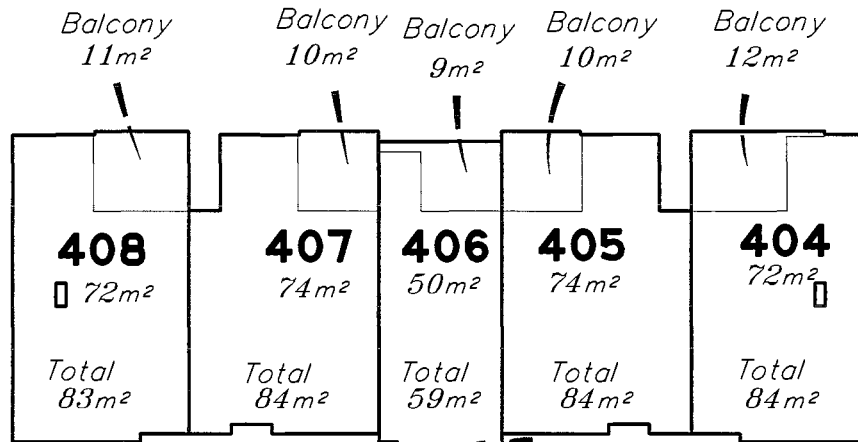
Insert Plan Number SP192426

Level G

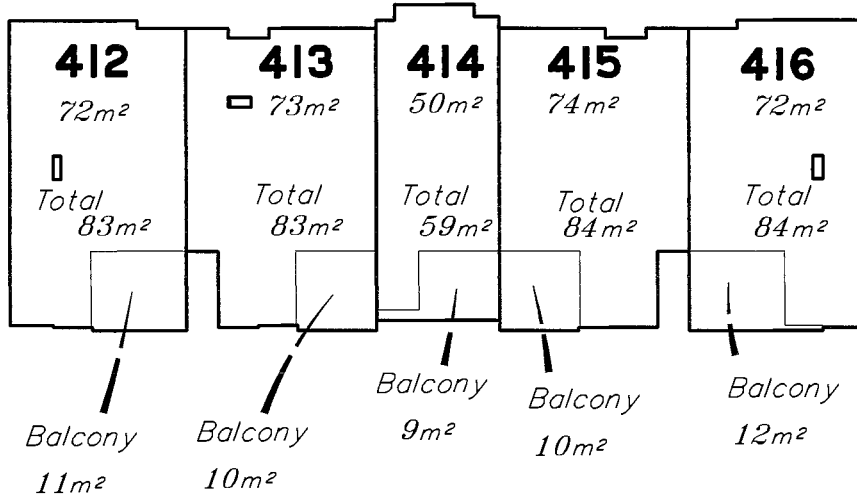
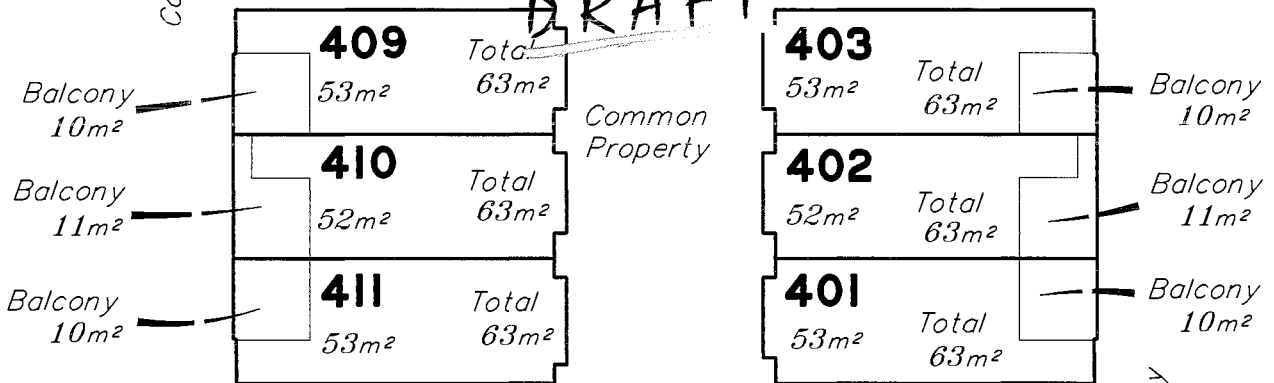
Level 3



Common Property

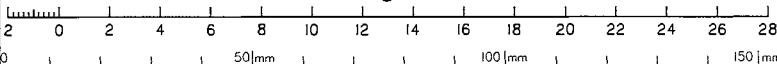


**DRAFT**



Common Property

Scale 1:200 - Lengths are in Metres.

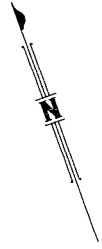


State copyright reserved.

Insert Plan Number **SP192426**

Level H

Level 4



Common Property

Balcony  
11m<sup>2</sup>

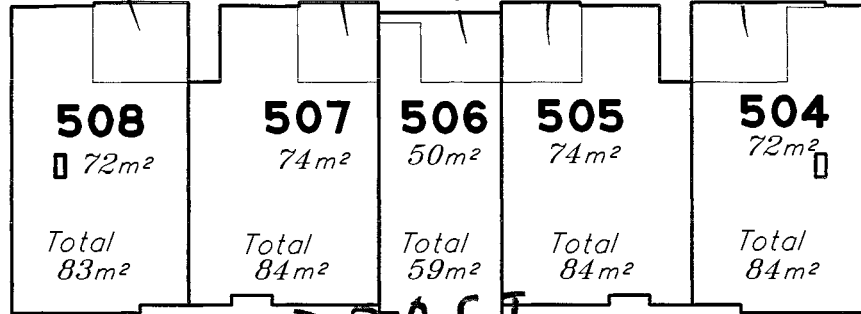
Balcony  
10m<sup>2</sup>

Balcony  
9m<sup>2</sup>

Balcony  
10m<sup>2</sup>

Balcony  
12m<sup>2</sup>

Common Property

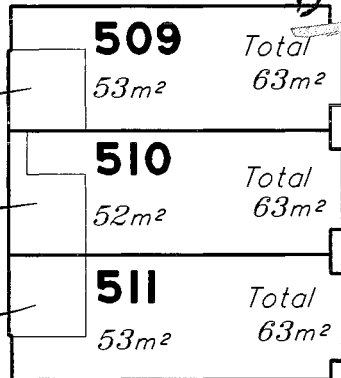


DRAFT

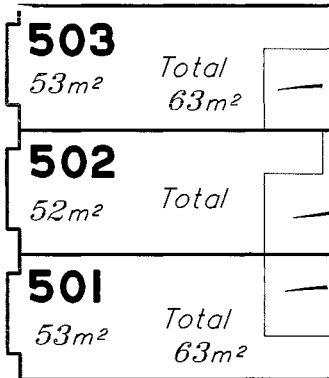
Balcony  
10m<sup>2</sup>

Balcony  
11m<sup>2</sup>

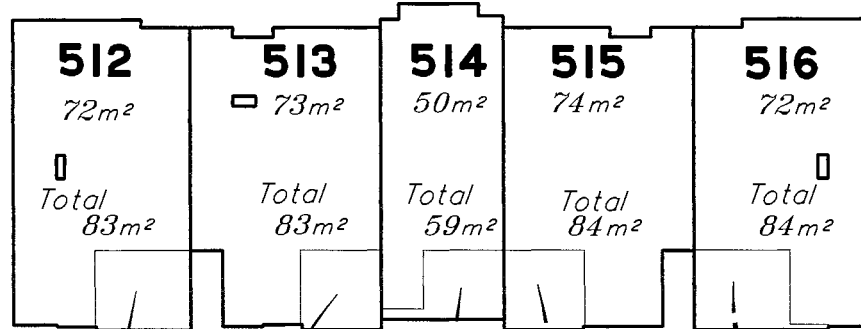
Balcony  
10m<sup>2</sup>



Common Property

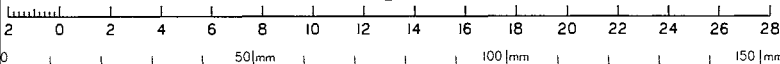


Common Property



Common Property

Scale 1:200 - Lengths are in Metres.



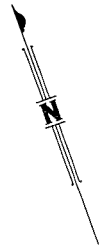
State copyright reserved.

Insert Plan Number SP192426

Level I

Level 5

Common Property



Balcony  
11m<sup>2</sup>

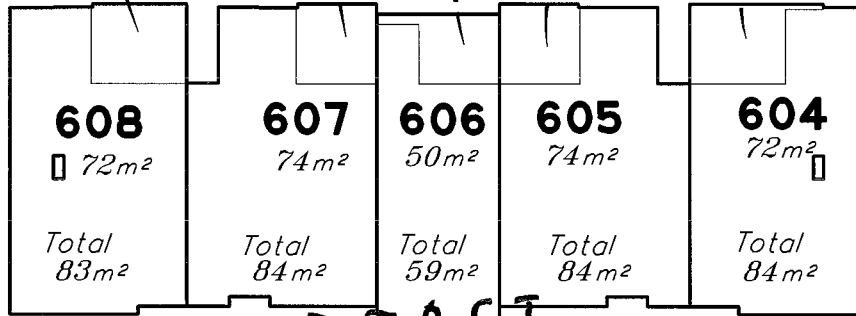
Balcony  
10m<sup>2</sup>

Balcony  
9m<sup>2</sup>

Balcony  
10m<sup>2</sup>

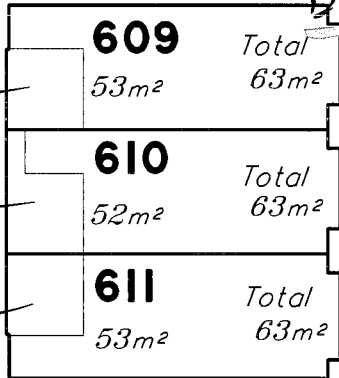
Balcony  
12m<sup>2</sup>

Common Property

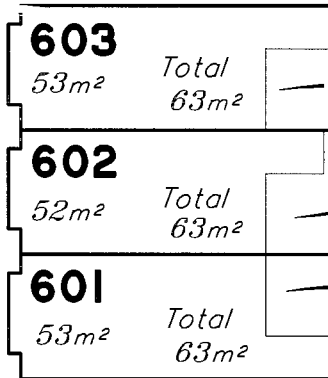


DRAFT

Balcony  
10m<sup>2</sup>



Common Property

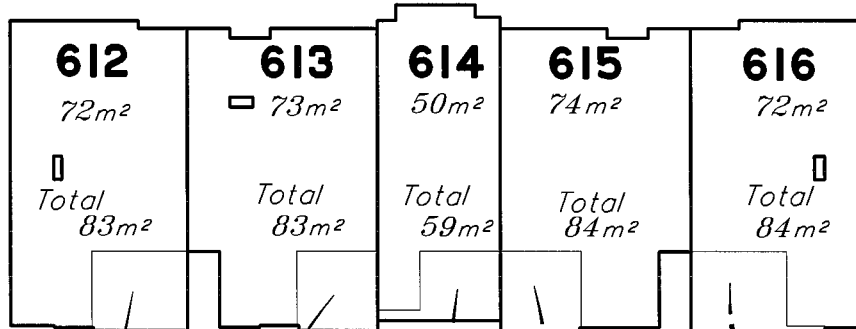


Balcony  
10m<sup>2</sup>

Balcony  
11m<sup>2</sup>

Balcony  
10m<sup>2</sup>

Common Property



Balcony  
11m<sup>2</sup>

Balcony  
10m<sup>2</sup>

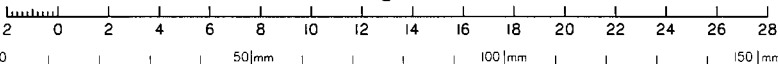
Balcony  
9m<sup>2</sup>

Balcony  
10m<sup>2</sup>

Balcony  
12m<sup>2</sup>

Common Property

Scale 1:200 - Lengths are in Metres.



State copyright reserved.

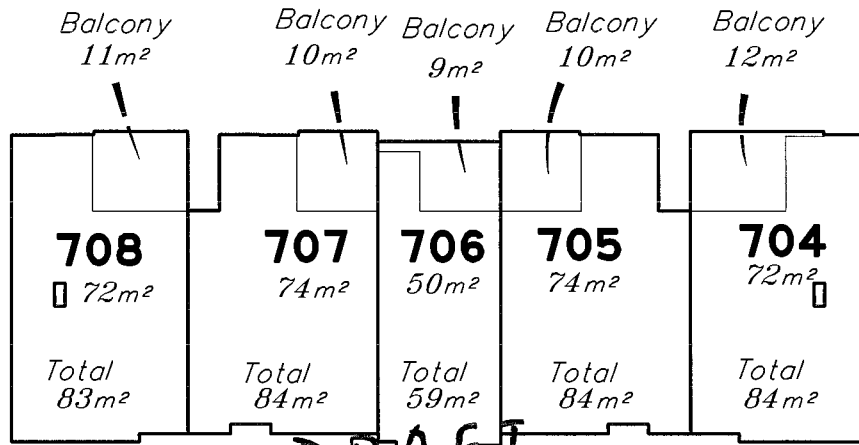
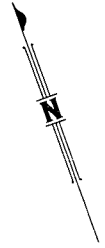
Insert  
Plan  
Number

SP192426

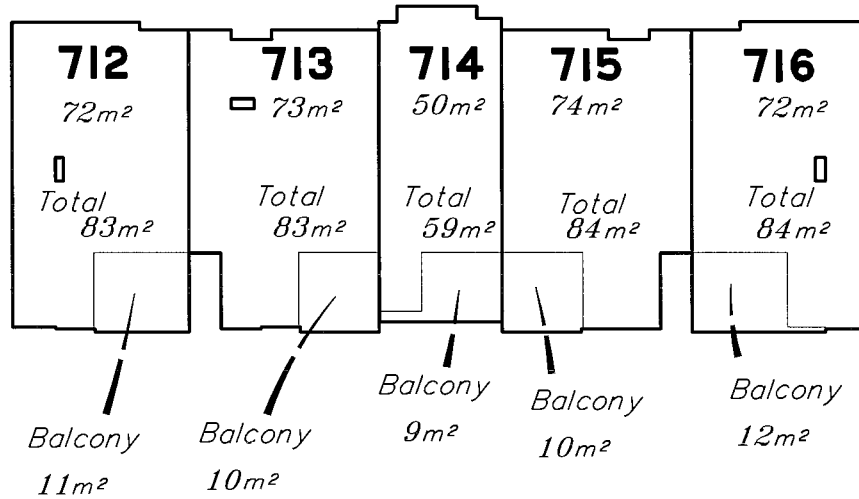
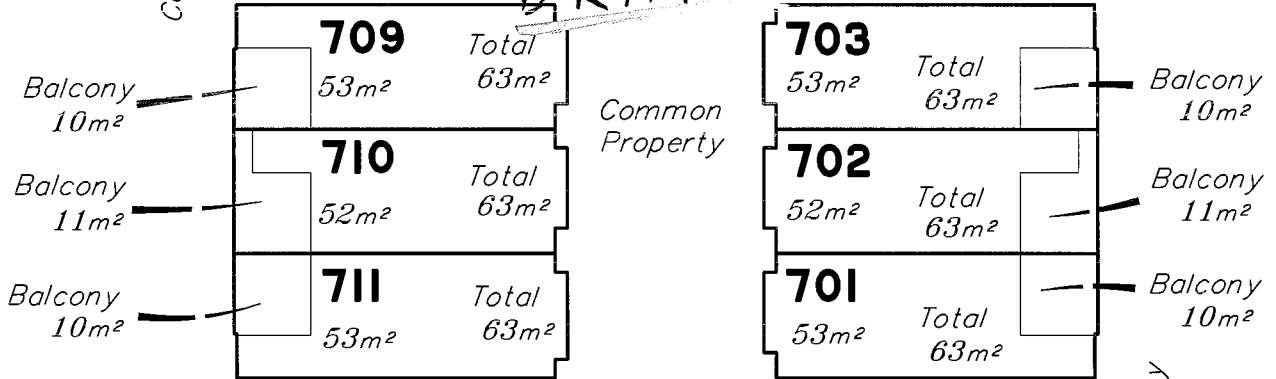
Level J

Level 6

Common Property

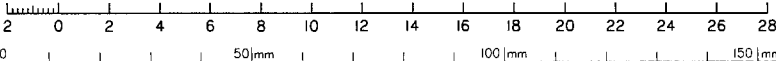


**DRAFT**



Common Property

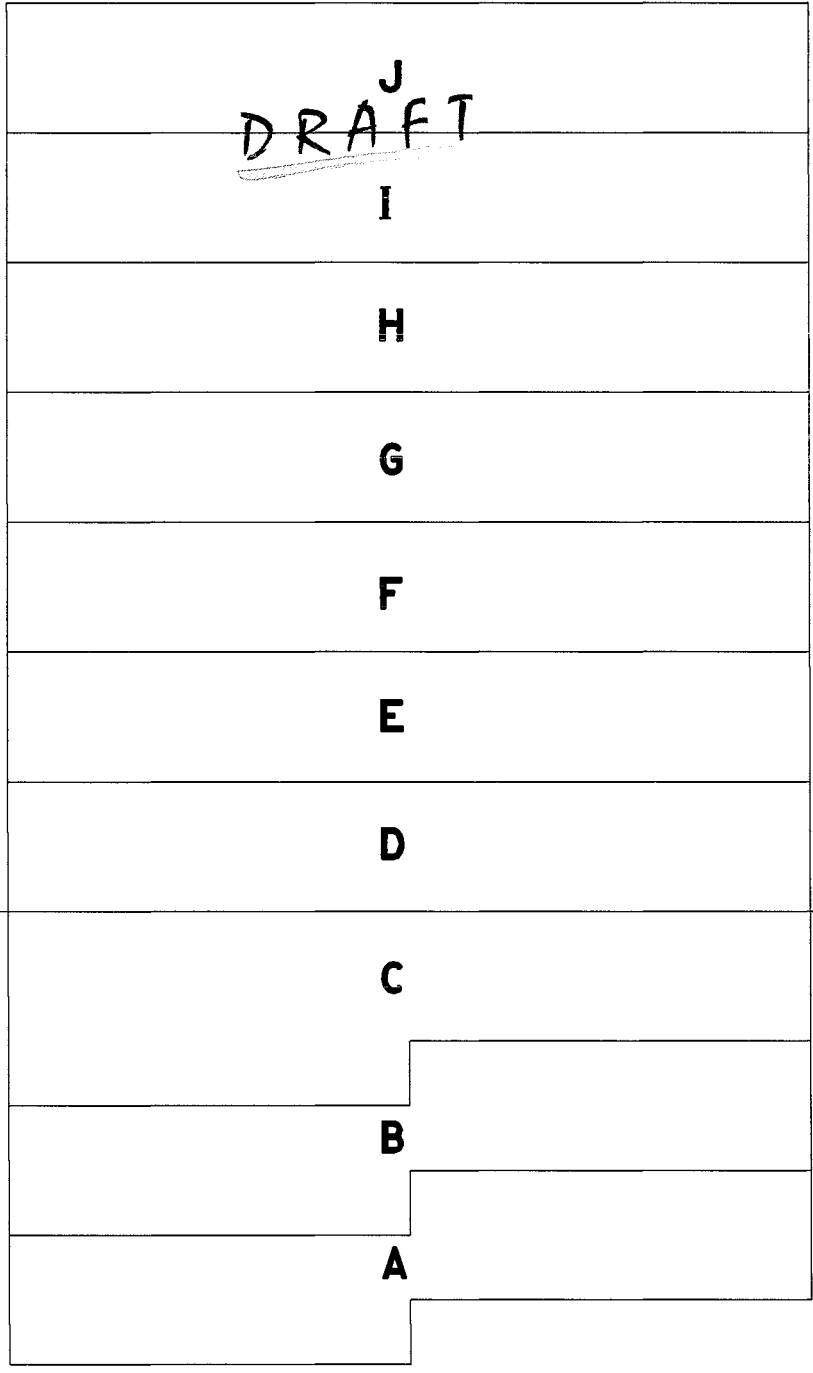
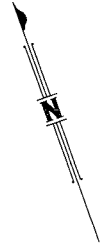
Scale 1:200 - Lengths are in Metres.



State copyright reserved.

Insert Plan Number **SP192426**

Lateral Aspect Diagram



J  
DRAFT

I

H

G

F

E

D

C

B

A

8  
RP10935

3  
RP10935

Not To Scale

State copyright reserved.

Insert Plan Number **SP192426**

## Part 6

Budgets and estimate initial annual contributions

---

Administrative fund and sinking fund budgets compiled to indicate the estimated position for Body Corporate for V77 Community Title Scheme for the first year of the Scheme follow this page.

**77-83 VICTORIA STREET, WEST END**

**Entitlements Schedule**

LOT NO.	Contribution Schedule Lot Entitlement	On-Site Manager's Fees (included in Total)	Body Corporate Manager's Fees (included in Total)	Interest Schedule Lot Entitlement	Building Insurance Contribution (included in Total)	Administration Fund (Total)	Sinking Fund	Total Per Lot Per Year	Amount Per Lot Per Week
101	106	\$1,223.32	\$214.08	552	\$277.80	\$2,429.47	\$831.19	\$3,538.46	\$68.05
102	106	\$1,223.32	\$214.08	552	\$277.80	\$2,429.47	\$831.19	\$3,538.46	\$68.05
103	90	\$1,038.67	\$181.77	420	\$211.37	\$2,062.76	\$705.73	\$2,979.86	\$57.30
104	100	\$1,154.08	\$201.96	552	\$277.80	\$2,291.95	\$784.15	\$3,353.90	\$64.50
105	90	\$1,038.67	\$181.77	422	\$212.38	\$2,062.76	\$705.73	\$2,980.86	\$57.32
106	90	\$1,038.67	\$181.77	422	\$212.38	\$2,062.76	\$705.73	\$2,980.86	\$57.32
107	90	\$1,038.67	\$181.77	422	\$212.38	\$2,062.76	\$705.73	\$2,980.86	\$57.32
108	109	\$1,257.94	\$220.14	710	\$357.31	\$2,498.23	\$854.72	\$3,710.26	\$71.35
109	107	\$1,234.86	\$216.10	680	\$342.22	\$2,452.39	\$839.04	\$3,633.64	\$69.88
201	90	\$1,038.67	\$181.77	417	\$209.86	\$2,062.76	\$705.73	\$2,978.35	\$57.28
202	90	\$1,038.67	\$181.77	417	\$209.86	\$2,062.76	\$705.73	\$2,978.35	\$57.28
203	90	\$1,038.67	\$181.77	417	\$209.86	\$2,062.76	\$705.73	\$2,978.35	\$57.28
204	100	\$1,154.08	\$201.96	547	\$275.28	\$2,291.95	\$784.15	\$3,351.38	\$64.45
205	100	\$1,154.08	\$201.96	554	\$278.81	\$2,291.95	\$784.15	\$3,354.90	\$64.52
206	90	\$1,038.67	\$181.77	420	\$211.37	\$2,062.76	\$705.73	\$2,979.86	\$57.30
207	100	\$1,154.08	\$201.96	554	\$278.81	\$2,291.95	\$784.15	\$3,354.90	\$64.52
208	100	\$1,154.08	\$201.96	547	\$275.28	\$2,291.95	\$784.15	\$3,351.38	\$64.45
209	90	\$1,038.67	\$181.77	417	\$209.86	\$2,062.76	\$705.73	\$2,978.35	\$57.28
210	90	\$1,038.67	\$181.77	417	\$209.86	\$2,062.76	\$705.73	\$2,978.35	\$57.28
211	90	\$1,038.67	\$181.77	417	\$209.86	\$2,062.76	\$705.73	\$2,978.35	\$57.28
212	100	\$1,154.08	\$201.96	547	\$275.28	\$2,291.95	\$784.15	\$3,351.38	\$64.45
213	100	\$1,154.08	\$201.96	554	\$278.81	\$2,291.95	\$784.15	\$3,354.90	\$64.52
214	90	\$1,038.67	\$181.77	420	\$211.37	\$2,062.76	\$705.73	\$2,979.86	\$57.30
215	100	\$1,154.08	\$201.96	554	\$278.81	\$2,291.95	\$784.15	\$3,354.90	\$64.52
216	100	\$1,154.08	\$201.96	547	\$275.28	\$2,291.95	\$784.15	\$3,351.38	\$64.45
301	90	\$1,038.67	\$181.77	422	\$212.38	\$2,062.76	\$705.73	\$2,980.86	\$57.32
302	90	\$1,038.67	\$181.77	422	\$212.38	\$2,062.76	\$705.73	\$2,980.86	\$57.32
303	90	\$1,038.67	\$181.77	422	\$212.38	\$2,062.76	\$705.73	\$2,980.86	\$57.32
304	100	\$1,154.08	\$201.96	552	\$277.80	\$2,291.95	\$784.15	\$3,353.90	\$64.50
305	100	\$1,154.08	\$201.96	559	\$281.32	\$2,291.95	\$784.15	\$3,357.42	\$64.57
306	90	\$1,038.67	\$181.77	425	\$213.89	\$2,062.76	\$705.73	\$2,982.37	\$57.35
307	100	\$1,154.08	\$201.96	559	\$281.32	\$2,291.95	\$784.15	\$3,357.42	\$64.57
308	100	\$1,154.08	\$201.96	552	\$277.80	\$2,291.95	\$784.15	\$3,353.90	\$64.50
309	90	\$1,038.67	\$181.77	422	\$212.38	\$2,062.76	\$705.73	\$2,980.86	\$57.32
310	90	\$1,038.67	\$181.77	422	\$212.38	\$2,062.76	\$705.73	\$2,980.86	\$57.32
311	90	\$1,038.67	\$181.77	422	\$212.38	\$2,062.76	\$705.73	\$2,980.86	\$57.32
312	100	\$1,154.08	\$201.96	552	\$277.80	\$2,291.95	\$784.15	\$3,353.90	\$64.50
313	100	\$1,154.08	\$201.96	559	\$281.32	\$2,291.95	\$784.15	\$3,357.42	\$64.57
314	90	\$1,038.67	\$181.77	425	\$213.89	\$2,062.76	\$705.73	\$2,982.37	\$57.35
315	100	\$1,154.08	\$201.96	559	\$281.32	\$2,291.95	\$784.15	\$3,357.42	\$64.57
316	100	\$1,154.08	\$201.96	552	\$277.80	\$2,291.95	\$784.15	\$3,353.90	\$64.50
401	90	\$1,038.67	\$181.77	427	\$214.89	\$2,062.76	\$705.73	\$2,983.38	\$57.37
402	90	\$1,038.67	\$181.77	427	\$214.89	\$2,062.76	\$705.73	\$2,983.38	\$57.37
403	90	\$1,038.67	\$181.77	427	\$214.89	\$2,062.76	\$705.73	\$2,983.38	\$57.37
404	100	\$1,154.08	\$201.96	557	\$280.32	\$2,291.95	\$784.15	\$3,356.41	\$64.55
405	100	\$1,154.08	\$201.96	564	\$283.84	\$2,291.95	\$784.15	\$3,359.94	\$64.61
406	90	\$1,038.67	\$181.77	430	\$216.40	\$2,062.76	\$705.73	\$2,984.89	\$57.40
407	100	\$1,154.08	\$201.96	564	\$283.84	\$2,291.95	\$784.15	\$3,359.94	\$64.61
408	100	\$1,154.08	\$201.96	557	\$280.32	\$2,291.95	\$784.15	\$3,356.41	\$64.55
409	90	\$1,038.67	\$181.77	427	\$214.89	\$2,062.76	\$705.73	\$2,983.38	\$57.37
410	90	\$1,038.67	\$181.77	427	\$214.89	\$2,062.76	\$705.73	\$2,983.38	\$57.37
411	90	\$1,038.67	\$181.77	427	\$214.89	\$2,062.76	\$705.73	\$2,983.38	\$57.37
412	100	\$1,154.08	\$201.96	557	\$280.32	\$2,291.95	\$784.15	\$3,356.41	\$64.55
413	100	\$1,154.08	\$201.96	564	\$283.84	\$2,291.95	\$784.15	\$3,359.94	\$64.61
414	90	\$1,038.67	\$181.77	430	\$216.40	\$2,062.76	\$705.73	\$2,984.89	\$57.40
415	100	\$1,154.08	\$201.96	564	\$283.84	\$2,291.95	\$784.15	\$3,359.94	\$64.61
416	100	\$1,154.08	\$201.96	557	\$280.32	\$2,291.95	\$784.15	\$3,356.41	\$64.55
501	90	\$1,038.67	\$181.77	432	\$217.41	\$2,062.76	\$705.73	\$2,985.90	\$57.42
502	90	\$1,038.67	\$181.77	432	\$217.41	\$2,062.76	\$705.73	\$2,985.90	\$57.42
503	90	\$1,038.67	\$181.77	432	\$217.41	\$2,062.76	\$705.73	\$2,985.90	\$57.42
504	100	\$1,154.08	\$201.96	562	\$282.83	\$2,291.95	\$784.15	\$3,358.93	\$64.59
505	100	\$1,154.08	\$201.96	569	\$286.35	\$2,291.95	\$784.15	\$3,362.45	\$64.66
506	90	\$1,038.67	\$181.77	435	\$218.92	\$2,062.76	\$705.73	\$2,987.41	\$57.45
507	100	\$1,154.08	\$201.96	569	\$286.35	\$2,291.95	\$784.15	\$3,362.45	\$64.66
508	100	\$1,154.08	\$201.96	562	\$282.83	\$2,291.95	\$784.15	\$3,358.93	\$64.59
509	90	\$1,038.67	\$181.77	432	\$217.41	\$2,062.76	\$705.73	\$2,985.90	\$57.42
510	90	\$1,038.67	\$181.77	432	\$217.41	\$2,062.76	\$705.73	\$2,985.90	\$57.42
511	90	\$1,038.67	\$181.77	432	\$217.41	\$2,062.76	\$705.73	\$2,985.90	\$57.42
512	100	\$1,154.08	\$201.96	562	\$282.83	\$2,291.95	\$784.15	\$3,358.93	\$64.59
513	100	\$1,154.08	\$201.96	569	\$286.35	\$2,291.95	\$784.15	\$3,362.45	\$64.66
514	90	\$1,038.67	\$181.77	435	\$218.92	\$2,062.76	\$705.73	\$2,987.41	\$57.45
515	100	\$1,154.08	\$201.96	569	\$286.35	\$2,291.95	\$784.15	\$3,362.45	\$64.66
516	100	\$1,154.08	\$201.96	562	\$282.83	\$2,291.95	\$784.15	\$3,358.93	\$64.59
601	90	\$1,038.67	\$181.77	437	\$219.92	\$2,062.76	\$705.73	\$2,988.41	\$57.47
602	90	\$1,038.67	\$181.77	437	\$219.92	\$2,062.76	\$705.73	\$2,988.41	\$57.47
603	90	\$1,038.67	\$181.77	437	\$219.92	\$2,062.76	\$705.73	\$2,988.41	\$57.47
604	100	\$1,154.08	\$201.96	567	\$285.35	\$2,291.95	\$784.15	\$3,361.45	\$64.64
605	100	\$1,154.08	\$201.96	574	\$288.87	\$2,291.95	\$784.15	\$3,364.97	\$64.71
606	90	\$1,038.67	\$181.77	440	\$221.43	\$2,062.76	\$705.73	\$2,989.92	\$57.50
607	100	\$1,154.08	\$201.96	574	\$288.87	\$2,291.95	\$784.15	\$3,364.97	\$64.71
608	100	\$1,154.08	\$201.96	567	\$285.35	\$2,291.95	\$784.15	\$3,361.45	\$64.64
609	90	\$1,038.67	\$181.77	437	\$219.92	\$2,062.76	\$705.73	\$2,988.41	\$57.47
610	90	\$1,038.67	\$181.77	437	\$219.92	\$2,062.76	\$705.73	\$2,988.41	\$57.47
611	90	\$1,038.67	\$181.77	437	\$219.92	\$2,062.76	\$705.73	\$2,988.41	\$57.47

**77-83 VICTORIA STREET, WEST END**

*Entitlements Schedule*

LOT NO.	Contribution Schedule Lot Entitlement	On-Site Manager's Fees (included in Total)	Body Corporate Manager's Fees (included in Total)	Interest Schedule Lot Entitlement	Building Insurance Contribution (included in Total)	Administration Fund (Total)	Sinking Fund	Total Per Lot Per Year	Amount Per Lot Per Week
612	100	\$1,154.08	\$201.96	567	\$285.35	\$2,291.95	\$784.15	\$3,361.45	\$64.64
613	100	\$1,154.08	\$201.96	574	\$288.87	\$2,291.95	\$784.15	\$3,364.97	\$64.71
614	90	\$1,038.67	\$181.77	440	\$221.43	\$2,062.76	\$705.73	\$2,989.92	\$57.50
615	100	\$1,154.08	\$201.96	574	\$288.87	\$2,291.95	\$784.15	\$3,364.97	\$64.71
616	100	\$1,154.08	\$201.96	567	\$285.35	\$2,291.95	\$784.15	\$3,361.45	\$64.64
701	90	\$1,038.67	\$181.77	442	\$222.44	\$2,062.76	\$705.73	\$2,990.93	\$57.52
702	90	\$1,038.67	\$181.77	442	\$222.44	\$2,062.76	\$705.73	\$2,990.93	\$57.52
703	90	\$1,038.67	\$181.77	442	\$222.44	\$2,062.76	\$705.73	\$2,990.93	\$57.52
704	100	\$1,154.08	\$201.96	577	\$290.38	\$2,291.95	\$784.15	\$3,366.48	\$64.74
705	100	\$1,154.08	\$201.96	584	\$293.90	\$2,291.95	\$784.15	\$3,370.00	\$64.81
706	90	\$1,038.67	\$181.77	450	\$226.47	\$2,062.76	\$705.73	\$2,994.96	\$57.60
707	100	\$1,154.08	\$201.96	584	\$293.90	\$2,291.95	\$784.15	\$3,370.00	\$64.81
708	100	\$1,154.08	\$201.96	577	\$290.38	\$2,291.95	\$784.15	\$3,366.48	\$64.74
709	90	\$1,038.67	\$181.77	442	\$222.44	\$2,062.76	\$705.73	\$2,990.93	\$57.52
710	90	\$1,038.67	\$181.77	442	\$222.44	\$2,062.76	\$705.73	\$2,990.93	\$57.52
711	90	\$1,038.67	\$181.77	442	\$222.44	\$2,062.76	\$705.73	\$2,990.93	\$57.52
712	100	\$1,154.08	\$201.96	577	\$290.38	\$2,291.95	\$784.15	\$3,366.48	\$64.74
713	100	\$1,154.08	\$201.96	584	\$293.90	\$2,291.95	\$784.15	\$3,370.00	\$64.81
714	90	\$1,038.67	\$181.77	450	\$226.47	\$2,062.76	\$705.73	\$2,994.96	\$57.60
715	100	\$1,154.08	\$201.96	584	\$293.90	\$2,291.95	\$784.15	\$3,370.00	\$64.81
716	100	\$1,154.08	\$201.96	577	\$290.38	\$2,291.95	\$784.15	\$3,366.48	\$64.74
<b>TOTALS</b>	<b>10008</b>	<b>\$115,500.00</b>	<b>\$20,212.50</b>	<b>52458</b>	<b>\$26,400.00</b>	<b>\$229,378.60</b>	<b>\$78,477.30</b>	<b>\$334,255.90</b>	<b>\$6,428.00</b>

**77-83 VICTORIA STREET, WEST END**

*Proposed Budget*

<b>ADMINISTRATION FUND</b>		INSERT DATE	
Contributions Receivable			
<b>LESS EXPENSES</b>		<b>Contribution</b>	<b>Interest</b>
		<b>\$229,378.60</b>	<b>\$26,400</b>
<b>Bank Charges</b>			
Bank Charges	\$300		
<b>Body Corporate Management</b>			
Business Activity Statements	\$1,100		
Disbursements	\$5,775		
Secretarial Fees	\$12,600		
<b>Caretaker</b>			
Caretaker	\$115,500		
<b>Community Power</b>			
Electricity	\$25,000		
<b>Fire Control</b>			
Fire - Contract	\$5,000		
Fire - Repairs & Maintenance	\$500		
Fire - QFRS Monitoring	\$2,800		
Fire - Report & Training	\$2,801		
<b>Insurance</b>			
Insurance - Policy			\$24,000
<b>Lift Expenses</b>			
Lift - Contract	\$20,000		
Lift - Repairs & Maintenance	\$500		
Lift Registration Fee	\$1,200		
Lift Phone	\$1,600		
<b>Pest Control</b>			
Pest Control	\$4,000		
<b>Pool Expenditure</b>			
Pool - Chemicals	\$3,000		
Pool - Repairs & Maintenance	\$500		
Annual Pool Safety Certificate	\$350		
<b>Professional Fees</b>			
Prep Income Tax Return	\$250		
Workplace Health & Safety	\$1,400		
Registration - GST/ABN	\$350		
<b>Repairs &amp; Maintenance</b>			
R & M - Building	\$3,000		
R & M - Electrical/Plumbing/Gardens & Grounds	\$1,000		
		\$208,526.00	\$24,000
GST		\$20,853	\$2,400
<b>Total Contributions Receivable</b>		<b>\$229,379</b>	<b>\$26,400</b>
		Total Units of Ent	10008
		Levy Per Unit of Ent	\$22.92
		52458	\$0.50

<b>SINKING FUND</b>			
GST		\$71,343	
Total Contributions Receivable		\$7,134	
		<b>\$78,477</b>	
		Total Units of Entitlement	10008
		Levy Per Unit of Entitlement	\$7.84

## Part 7

Terms of engagement of body corporate manager

---

A copy of the proposed engagement follows this page.



## *Administration Agreement Engagement of a Body Corporate Manager*

*For use by SCA (Qld) members with a Practising Certificate*

This Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_ 2013  
(insert date) (insert month)

### **BETWEEN**

The Body Corporate for \_\_\_\_\_ CTS \_\_\_\_\_  
(insert Body Corporate name)

of 77-83 Victoria Street, West End

### **AND**

**Archers Body Corporate Management Pty Ltd** ..... ABN 34 010 611 695  
("the Body Corporate Manager")

of Level 4, 97 Creek Street, Brisbane Qld 4000

### **ABOUT THIS AGREEMENT**

This Agreement is produced by the SCA (Qld). It provides for the engagement of a body corporate manager by a body corporate.

This Agreement may only be used by body corporate managers holding a *Practising Certificate* issued by SCA (Qld).

Under this Agreement, the Body Corporate appoints the Manager as the body corporate manager for the Scheme.

### **TERMINATION OF THE AGREEMENT**

This Agreement is a binding legal document. The engagement of the body corporate manager may be terminated only in accordance with Clause 12

### **TERM, OPTIONS AND PRICES**

This Agreement may be for a term of up to three years (including options) - See Clause 3.

All costs expressed in dollar (\$) terms exclude any applicable GST - See Clause 14

### **SPECIAL CONDITIONS TO THE AGREEMENT**

Any special conditions to this Agreement appear in Item K.

### **COPYRIGHT AND REPRODUCTION**

The copyright in this Agreement is owned by SCA (Qld). Only a Manager who holds a current *Practising Certificate* issued by SCA (Qld) or other person authorised in writing by SCA (Qld) may use this Agreement or reproduce it for the purpose of the manager's use only (including scanned copies for electronic archival). In all other cases reproduction, including retyping, of this Agreement is prohibited without prior written consent of SCA (Qld).

### **FURTHER ADVICE**

Body corporate managers and others seeking to use this Agreement should seek independent legal advice if questions exist concerning any provisions contained within this Agreement.



Postal Address: GPO Box 3025  
Brisbane, QLD 4001

Street Address: Level 4, 97 Creek Street  
Brisbane, QLD 4000

Phone: 07 3220 9400  
Fax: 07 3220 9499  
Email: Brisbane@abcm.com.au



## STANDARD CONDITIONS

### 1. INTRODUCTION

- 1.1 All words having a defined meaning in the Act have the same meaning in this Agreement (unless the context otherwise requires).
- 1.2 In this Agreement, terms in bold in the Reference Schedule have the meanings shown opposite them.
- 1.3 Unless the context otherwise permits -
- (1) "Act" means the *Body Corporate and Community Management Act (Qld) 1997*;
  - (2) "Additional Services" means those services stated in Item G of the Reference Schedule;
  - (3) "Agreed Services" means those services stated in Item F of the Reference Schedule;
  - (4) "Authorised Powers" means all those powers of the executive committee members of the Body Corporate that are capable of exercise by a body corporate manager under the Act unless otherwise amended or excluded under the Special Conditions to this Agreement;
  - (5) "Committee" means the committee chosen by the Body Corporate at each annual general meeting;
  - (6) "CPI" means the Consumer Price Index (All Groups) for Brisbane as published by the Australian Bureau of Statistics;
  - (7) "Disbursements" means the disbursements listed in Item E of the Reference Schedule.
  - (8) "Module" means the regulation module of the Act applying to the Scheme from time to time, which at the commencement of this Agreement is the module referred to in Item J of the Reference Schedule;
  - (9) "Reference Schedule" means the reference schedule annexed to this Agreement;
  - (10) "Review Date" means each anniversary of the commencement date of this Agreement;
  - (11) "SCA (Qld)" means Strata Community Australia (Qld) Limited ACN 010 517 923;
  - (12) "Scheme" means the community title scheme for which the Body Corporate is the body corporate;
  - (13) "Special Conditions" means the special conditions noted in Item K of the Reference Schedule;
  - (14) "Standard Conditions" means the standard condition applying to this Agreement;
  - (15) "Term" means the term set out in Item A of the Reference Schedule.
- 1.4 A reference to an Item is a reference to the applicable item in the Reference Schedule.
- 1.5 This Agreement comprises the -
- (1) Reference Schedule;
  - (2) Standard Conditions; and
  - (3) any Special Conditions.
- 1.6 Where there is any inconsistency between any Special Condition to this Agreement and the Standard Conditions, the Special Condition prevails.

### 2. WHAT IS THIS AGREEMENT?

- 2.1 The Body Corporate appoints the Manager as the body corporate manager for the Scheme and the Manager accepts the appointment.
- 2.2 The Manager is engaged by the Body Corporate (as an independent contractor and not as an employee of the Body Corporate) to supply administrative services only (comprising the Agreed Services and the Additional Services where applicable) to the Body Corporate.
- 2.3 The parties acknowledge and agree that the appointment of the Manager is not an engagement of the Manager under Chapter 3 Part 5 of the Module.
- 2.4 For the avoidance of doubt, the Body Corporate acknowledges and agrees that this Agreement is not a property maintenance agreement and that the Manager is not required under this Agreement to carry out any property maintenance for the Scheme.

### 3. WHAT IS THE TERM OF THIS AGREEMENT?

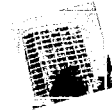
- 3.1 The Manager is appointed for the Term.

### 4. WHAT ARE THE DUTIES OF THE MANAGER UNDER THIS AGREEMENT?

- 4.1 The Manager must supply the Agreed Services stated in Item F to the Body Corporate in accordance with the terms of this Agreement.
- 4.2 The Manager may supply the Additional Services stated in Item G to the Body Corporate at the Body Corporate's request.
- 4.3 During the Term, the Manager shall have the custody of the common seal of the Body Corporate.
- 4.4 The Manager will at all times comply with:
- (1) the Act;
  - (2) the Module;
  - (3) the code of conduct in the Act applying to body corporate managers; and
  - (4) the *Code of Ethical Conduct* published by SCA (Qld).
- 4.5 The Body Corporate will use its best endeavours to ensure the committee voting members at all times aware of their obligations under and shall comply with, the code of conduct in the Act applying to committee voting members.

### 5. WHAT ARE THE AUTHORISED POWERS OF THE MANAGER?

- 5.1 The Body Corporate authorises the Manager to exercise the Authorised Powers.
- 5.2 The Manager shall only exercise the Authorised Powers to facilitate the performance of the Agreed Services or any Additional Services.
- 5.3 The Manager is not under any obligation to exercise the Authorised Powers except to the extent necessary to facilitate the performance of the Agreed Services and the Additional Services.
- 5.4 Without limiting clause 5.2, the Manager is specifically authorised to administer funds controlled by the Body Corporate.



5.5 The authorisation given by the Body Corporate to the Manager to exercise the Authorised Powers under this clause 5 does not:

- (1) make the Manager responsible for performing the statutory functions of the Body Corporate or the Committee;
- (2) relieve the Body Corporate or the Committee of their statutory functions.

5.6 The Body Corporate specifically authorises the Manager to:

- (1) obtain quotations for insurances required to be effected by the Body Corporate under the Act or the Module;
- (2) effect, on behalf of the Body Corporate such insurances as the Body Corporate directs the Manager to obtain;
- (3) pay insurance premiums from the Body Corporate's funds; and
- (4) submit insurance claims to the Body Corporate's insurers which the Body Corporate acknowledges forms part of the Additional Services.

5.7 The Body Corporate agrees and acknowledges that the Manager, in performing the service under clause 5.6, is not providing advice, nor is the Manager obliged to provide advice as to what insurance policy or policies the Body Corporate ought effect and the Body Corporate agrees and acknowledges it does not rely on the Manager (nor is it reasonable to rely on the Manager) to advise in respect of which insurances may be suitable for the Body Corporate and/or the extent, nature, level or appropriateness of any insurance policy effected from time to time by the Body Corporate.

**6. HOW IS THE MANAGER TO BE PAID?**

6.1 The Body Corporate must pay the Manager:

- (1) for the performance of the Agreed Services – the fee stated in Item B;
- (2) for the performance of the Additional Services – the fees stated in Item C; and
- (3) an amount for any Disbursements associated with the provisions of the Agreed Services or the Additional Services.

6.2 The Manager may -

- (1) charge the Body Corporate for Disbursements at the rates stated in Item E for the Agreed Services and Additional Services (which may include a margin above cost to the Manager);
- (2) keep fees received by it for:
  - (a) information which the Manager must supply about the Body Corporate under the Act or the Module (eg, an information certificate under section 205 of the Act);
  - (b) services supplied at the request of lot owners (eg, information required to prepare a disclosure statement under section 206 of the Act); and
- (3) retain commissions paid to it by the providers of services to the Body Corporate as disclosed in item i.

6.3 The Body Corporate must pay fees for Agreed Services, the Additional Fees and the Disbursements by EFT or direct debit (at the election of the Manager) to the Manager's nominated account, or otherwise as directed by the Manager from time to time

6.4 When the Term is greater than one (1) year, the Body Corporate agrees that on each anniversary of the commencement date of this Agreement the Manager may increase the fee for the Agreed Services to an amount which is the greater of

- (1) The fee paid for the immediately preceding year increased by the fixed percentage increase amount stated in Item D; and
- (2) The amount calculated using the following formula:

$$A \times \frac{B}{C}$$

where:

A is the fee payable for the year immediately prior to the Review Date;

B is the CPI determined for the quarter ending immediately prior to the Review Date;

C equals the CPI determined for the quarter ending immediately prior to commencement of the year last concluded.

6.5 The Body Corporate agrees that the fees and charges payable for the Additional Services and Disbursements may be increased by the Manager on 1 July each year following commencement of this Agreement and the Body Corporate must pay the increased fees and charges by the Manager at the reviewed rate from time to time.

6.6 The increased fee for the Agreed Services is payable by the Body Corporate from that date which is the anniversary of the commencement date of this Agreement notwithstanding the fees may not be reviewed until after that date.

**7. HOW DOES THE BODY CORPORATE GIVE INSTRUCTIONS TO THE MANAGER?**

7.1 The Body Corporate must nominate in writing a person who must be a committee voting member to communicate with the Manager on behalf of the Body Corporate (the Nominee). In the event that no person is nominated by the Committee, the chairperson of the Committee is taken to be the Nominee.

7.2 The Body Corporate may replace the Nominee by written notice to the Manager.

**8. DISCLOSURE OF ASSOCIATES**

8.1 If the Body Corporate proposes to enter into a contract with a provider of goods and services and that provider is an associate of the Manager, then the Manager must disclose the relationship to the Body Corporate:

- (1) if the Manager is aware of the proposed contract then before the contract is entered into; or
- (2) otherwise as soon as it becomes aware that the contract is being and/or has been entered into.

8.2 The Manager discloses that at the commencement of this Agreement it is associated with the providers of goods and services stated in Item H and that shall



be sufficient disclosure of these relationships for the purposes of clause 8.1.

8.3 Where the Manager has an arrangement with the provider of goods or services, and the Manager is entitled to receive a commission if the Body Corporate enters into a contract with that provider, then:

- (1) the details of any existing arrangement between the manager and the provider as at the commencement of this Agreement are disclosed in Item I; or
- (2) for a new arrangement entered into after the commencement of this Agreement - the Manager must disclose to the Body Corporate the details of that arrangement before accepting any commission from the provider.

8.4 With the exception of any arrangement disclosed by the Manager as described in clause 8.3, the Manager must not, without the prior consent of the Body Corporate receive any commission from any contractor or supplier because the Body Corporate entered into an agreement with the contractor or supplier.

#### 9. RELEASE & INDEMNITY BY THE BODY CORPORATE

9.1 The Body Corporate:

- (1) Releases, discharges and forever holds harmless the Manager (to the extent permitted by law) from any damages, losses, liabilities, costs, expenses and/or claims; and
- (2) Indemnifies and keeps indemnified the Manager against any damages, losses, liabilities, costs,
- (3) expenses or claims incurred by the Manager (including the Manager being made a party to any litigation commenced by or against the Body Corporate); arising out of or in connection with:
- (4) the exercise or performance of the Manager's rights and obligations under this Agreement;
- (5) the relationship between the Manager and the Body Corporate; or
- (6) the Manager being the manager for the Scheme, however such damages, losses, liabilities, costs, expenses and/or claims arise, including through breach of contract, negligence or breach of the Act by the Manager.

#### 10. BODY CORPORATE WARRANTY

10.1 The Body Corporate warrants it has validly passed any necessary resolutions required to enable it to enter into this Agreement or give any authorization under it.

#### 11. WHAT ARE THE CONDITIONS FOR TRANSFER OF THIS AGREEMENT?

11.1 This Agreement may be transferred by the Manager only in accordance with the Act.

#### 12. WHAT ARE THE CONDITIONS FOR TERMINATING THIS AGREEMENT?

12.1 Either party may terminate this Agreement in accordance with the Act and/or the Module.

12.2 The Manager may terminate this Agreement at any time and for any reason by giving 60 days written notice to the Body Corporate.

12.3 If the Body Corporate fails to pay the Manager any amount owing to it under this Agreement and the failure continues for a period of 14 days after notice of the failure is given to the Body Corporate by the Manager, then:

- (1) the Manager may terminate this Agreement by giving 30 days written notice to the Body Corporate; and
- (2) the Body Corporate will reimburse the Manager for the Manager's costs of recovering that amount from the Body Corporate, including any legal costs on an indemnity basis

#### 13. BODY CORPORATE RECORDS

13.1 On expiry or earlier termination of this Agreement, the Manager must deliver to the Body Corporate its seal and the records and other documents in accordance with the Act and the Module.

13.2 The Manager acknowledges that it does not have a lien over the seal and the records and other documents of the Body Corporate.

13.3 Without any obligation to on the part of the Manager, the Body Corporate authorises the Manager to hold any document of the Body Corporate in photographic or electronic image form.

#### 14. GOODS AND SERVICES TAX

14.1 For the purposes of this clause, a goods and services tax ("GST") means any tax imposed by any government or regulatory authority which is a tax on goods and services, a tax on consumption, a value-added tax or any similar impost.

14.2 Unless GST is expressly included, any fee or consideration expressed to be payable by the Body Corporate under any part of this Agreement does not include any GST that may be payable on the supply for which the fee or consideration is paid.

14.3 The Body Corporate must pay to the Manager, in addition to any fee or consideration payable for the Agreed Services, Additional Services or Disbursements, any additional amount of GST payable on the supply of those services.

14.4 The Body Corporate and the Manager agree to do all things, including providing tax invoices and other documentation, necessary or desirable to assist the other in claiming any input tax credit, adjustment or refund for any GST payable under this Agreement.

#### 15. MISCELLANEOUS

15.1 Any notice required to be given or served by either party to this Agreement shall be given or served in the same manner as is provided for in the *Property Law Act (Qld) 1974*.

15.2 If anything in this Agreement is unenforceable, illegal or void then it is severed and the rest of this Agreement remains in force unless the basic purposes of this Agreement would be defeated by severance of the offending provision. This Agreement shall be governed and construed with reference to the laws in force in the state of Queensland.



# Administration Agreement Engagement of a Body Corporate Manager

For use by SCA (Qld) members with a Practising Certificate

**REFERENCE SCHEDULE**

**ITEM**

**A. TERM (clause 3)**

3 years commencing on

and ending on

Does the Manager hold a SCA (QLD) *Practising Certificate*  YES  NO

Does the Manager have professional indemnity insurance?  YES  NO

If so, how much?..... \$ 10,000,000

**B. FEES FOR AGREED SERVICES**

The fee for Agreed Services shall be \$ 12,600.00 per annum

per annum payable in advance on the basis indicated right: 1/1, 1/4, 1/7, 1/10

**C. ADDITIONAL FEES (exclusive of GST)**

Schedule of hourly rates for Additional Services

Director(s)	per hour ...	\$220.00
Insurance Manager	per hour ...	\$190.00
Body Corporate Managers	per hour ...	\$175.00
Assistant BCM	per hour ...	\$120.00
Accountant	per hour ..	\$155.00
Assistant Accountant	per hour ....	\$95.00
Administrative Staff	per hour .....	\$95.00

**SCHEDULE OF ADDITIONAL SERVICES FEES**

Travel Expenses to attend On-Site	\$	at ATO rates
Work Orders issued plus attendance fees at nominated hourly rates	\$47.00	
Voting Outside Committee (Flying Minute)	\$91.00	
Reconvened Meeting	\$170.00	
Internet Access	\$ 11.90	per lot
Trades Monitor	At Cost	
Preparation of Information For	\$6.20	per lot

**Audit of Records**

Archive storage fee:	\$1.25/lot/p.a.
Utilities Invoicing & Reading per Invoice	\$11.00
Utilities and other facilities Invoicing Only	\$8.50
Preparation of Information For Business Activity Statement (BAS) (per Qtr)	
(1 – 100 lots)	\$245.00
(101 – 200 lots)	\$275.00
(201 +)	\$305.00
Preparation of Instalment Activity Statement (IAS)	\$29.50 per Qtr
Arrears Collection	
Arrears Notices -	
(1 <sup>st</sup> ) charged against owner of lot	no cost
(2 <sup>nd</sup> ) charged against owner of lot	\$36.00
Property Data Search	\$23.00
(3 <sup>rd</sup> ) charged against owner of lot	\$52.00

**D. FIXED PERCENTAGE INCREASE**

The fixed percentage increase is the higher of 3% or CPI%

**E. DISBURSEMENTS (exclusive of GST)**

Agreed Services **FIXED at \$55.00 per lot, \$5,775.00 per annum.**

Additional Services  Cost per Item

The disbursements are as follows

**Cost per Item**

Telephone – Local calls:	\$0.41
Telephone - Mobile:	At Cost
Telephone – Long distance (within Aust.):	At Cost
Telephone – Long distance (overseas):	At Cost
Facsimile – Local:	\$1.13
Facsimile – All long distance:	\$1.13
Facsimile – Incoming:	\$1.13
Photocopying (1x single-sided copy):	\$0.50
Computer laser prints – A4 page:	\$0.50
Color copy	\$1.50
Printing (BC Max)	\$0.50



Envelopes – Standard DL	\$0.25
Envelopes – Ballot – Custom Stamp	\$1.13
Envelopes – Other	\$0.57
Postage:	Standard Australia Post Rates
Archive Retrieval	At Cost
Emails	\$0.63
Scanning	\$0.63
Labels Each	\$0.14
Dividers Each	\$0.31
Dividers Packet	\$3.10
Sleeves	\$0.24
Manilla Folders	\$0.39
Manilla Files	\$2.05
Lever Arch Files	\$3.70
Journal Book	\$4.10
Micro encoded Forms	\$0.67
Electronic Funds Transfer	\$1.08
Letterhead/Follower	\$0.29

**F. AGREED SERVICES**

The agreed services are as follows:

**Secretarial**

- Convene and attend the Annual General Meeting up to the number of hours: 3
- Call nominations for the position of executive and ordinary members of the Committee.
- Prepare and distribute the notice of annual general meeting and ancillary documentation.
- Record and distribute minutes of annual general meeting.
- Prepare and distribute notices for committee meetings based upon the following number of meetings: 3
- Attend Committee Meetings based upon the following number of meetings: 3  
and up to the following number of hours per meeting: 3
- Record and distribute the minutes of committee meetings based upon the following number of meetings : 3
- Arrange for the appointment of a returning officer.

*The engagement of the returning officer will be an additional expense to the Body Corporate (if required for a general meeting).*

**Financial**

- Open, maintain and operate a bank account for the administrative fund and the sinking fund.
- Prepare a statement of accounts for each financial year.
- Prepare a draft budget for each financial year.
- Issue notices to lot owners for payment of contributions.
- Receipt and bank levies.
- Process and pay accounts.
- Prepare financial records and statements as required by the Regulations for the Module stated in Item J.
- Preparation of taxation files and submission to Archer Gowland for completion.

**Administrative**

- Pay insurance premiums and organise renewal quotations for renewals.
- Establish and maintain the roll and registers
- Maintain and keep records
- Make available the records for inspection

**G. ADDITIONAL SERVICES**

- Any Agreed Services required to be undertaken outside of normal business hours ie 8:30 am – 5:00 pm (Mon – Fri)
- Preparation of notice of meeting, distribution of minutes and attendance at meetings in excess of those stated as an Agreed Service including EGM's, Flying Minutes and Reconvened Meetings.
- Any reasonable and lawful request by the Body Corporate which is not stated as an Agreed Service
- Collection of levy arrears.
- Prepare and distribute other levy notices (e.g. utility on-charging notices)
- Advice provided to individual lot owners
- Insurance claims handling – other than when Archers Body Corporate Management are the approved Insurance Agent
- Preparation of Application or Legal Action/Submission to Commissioner for Body Corporate and the Building Services Authority or Solicitors.
- Arranging for Lodgment of Documents with Dept. of Natural Resources & Mines.
- Enforcement of by-laws including preparation of breach notices.
- Liaison with Independent Contractors including major contracts.



H. DISCLOSURE OF ASSOCIATES

Providers that are associates of the Manager and the nature of the relationship.

Name of Company: Archer Gowland, Chartered Accountant  
Relationship: Colin Archer is a substantial stakeholder  
Work Performed: Preparation of Income Tax Returns; Tax & GST Lodgments; Rulings; and Tax & GST advice as required  
Name of Company: Archers BCM Services Pty Ltd  
Relationship: Colin Archer is a substantial stakeholder  
Work Performed: Provider of fire safety services, workplace health and safety services and quantity surveying services

I. DISCLOSURE OF COMMISSIONS

Providers of services that pay a commission to the Manager

Name of Company: CHU Insurance Australia  
Commission Details: 5 – 20% on base premium

Name of Company: Allianz Insurance Australia  
Commission Details: 5 – 20% on base premium

Name of Company: SUU Insurance  
Commission Details: 5 - 20% on base premium

Name of Company: BCB Insurance  
Commission Details: 5 – 20% on base premium

Name of Company: Wesfarmers Insurance  
Commission Details: 5 – 20% on base premium

Name of Company: Honan Insurance Group  
Commission Details: Up to 20% on base premium

J. RELEVANT MODULE

- Standard  Commercial  
 Accommodation  Small Schemes

K. SPECIAL CONDITIONS (INCLUDING AMENDMENTS TO THE STANDARD CONDITIONS)



*Administration Agreement  
Engagement of a Body Corporate Manager*

*For use by SCA (Qld) members with a Practising Certificate*

THE COMMON SEAL of the Body Corporate for:

\_\_\_\_\_  
(Name of Scheme)

was affixed pursuant to an ordinary resolution of the  
Body Corporate in the presence of:

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Designation)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Designation)

\_\_\_\_\_  
(Date)

EXECUTED by **Archers Body Corporate  
Management Pty Ltd**  
pursuant to Section 127 of the Corporations Act 2001

\_\_\_\_\_  
(Signature of Sole Director/Director)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Signature of Director/Secretary)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Date)

Must be reproduced in its complete  
and unaltered state.

## Part 8

Terms of authorisation of a person as letting agent

---

A copy of the proposed letting authorisation agreement follows this page.

---

# Letting agreement

---

Body Corporate for V77 Community Title Scheme

[#insert name of Agent]

Version: 1

# Letting agreement

Dated

---

## Parties

**Body Corporate**     **The Body Corporate for V77 Community Title Scheme**

of of c/- 1 Musgrave Rd, Red Hill, Queensland 4059

**Agent**                 **[#insert name of Agent]**

of [#insert address]

## Background

A        The Body Corporate is the Body Corporate for the purpose of the *Body Corporate and Community Management Act 1997* (Qld) in respect of the community titles scheme relating to a building complex known as V77, situated at 77 Victoria St, West End, Brisbane in the State of Queensland (**Complex**).

B        It has been agreed by and between the parties that the Body Corporate will grant the Agent the right to let lots in the Complex for and on behalf of such lot owners as shall request that service.

## Agreed terms

### **1 Interpretation**

---

Unless the context otherwise requires:

- (a)     in this agreement words importing the singular number shall include the plural and words importing the neuter gender shall be read as importing such gender as the case may require from time to time and words importing corporation shall include a person or persons and vice versa as the case may require from time to time;
- (b)     any reference to a statute is to be construed as including all statutory provisions consolidation, amending or replacing the statute referred to and all regulations, rules bylaws, proclamations, orders and other authorities pursuant to the statute;
- (c)     headings have been inserted for guidance only and shall not form part of nor affect the interpretation hereof;
- (d)     whenever the same is used herein the word 'Agent' shall mean, include and bind the Agent or where there is more than one the Agents and his her or their (whichever the case may be) executors, administrators and assigns;
- (e)     where two or more persons are named herein as the Agent or become the Agent the expression the 'Agent' shall be a reference those persons jointly as well as to each of them severally and this instrument and the obligations and agreement on their part

herein contained or implied shall bind those persons jointly as well as each of them severally; and

- (f) unless otherwise defined herein, words and expressions defined in the *Body Corporate and Community Management Act 1997* (Qld) to have particular meaning shall have that meaning when used herein.

## **2 Term of agreement**

---

The term of this agreement shall be 25 years beginning on and from \_\_\_\_\_ and ending on \_\_\_\_\_.

## **3 Letting**

---

- (a) The Agent is entitled to carry on the business of real estate agency for the letting of lots within the Complex on behalf of such owners of lots in the Complex as require that service together with all associated services commonly rendered in connection with such an agency.
- (b) The Agent hereby acknowledges and agrees that any lot owner may use the services of any similar business or businesses at the election of any such lot owner and the Agent warrants that it will not hinder any person so engaged.

## **4 Covenant by Body Corporate**

---

To the extent of its power to legally do so the Body Corporate covenants that with respect to the letting of any lots in the Complex it shall not authorise any person or corporation other than the individual owners of lots in the Complex who shall be entitled to exercise their rights in accordance with clause 3(b).

## **5 Assignment**

---

- 5.1 The Agent shall be at liberty to assign the Agent's interest in this agreement to any person firm or corporation subject to the prior approval of the committee of the Body Corporate. Such approval shall not be unreasonably withheld if the proposed assignee is responsible, respectable and capable of conduction the obligations of the Agent under this Agreement and having regard to any matters which the Body Corporate committee by statue is entitled to take into account. In the event of a proposed assignment by the Agent notice in writing shall be given to the secretary of the Body Corporate of such proposal which notice shall include all pertinent details of the proposed assignee or assignees and shall be accompanied by the following information:
- (a) at least two character references for each proposed assignee (or if the proposed assignee is a corporation then such references shall be supplied for each of the directors of the corporation);
- (b) at least two business references; and
- (c) a letter of authority to the Body Corporate authorising the Body Corporate to conduct such other enquiries as the Body Corporate may see fit in respect of such assignee or proposed assignee.

- 5.2 The Body Corporate committee's decision whether to approve any such assignment shall be communicated in writing by the Body Corporate secretary to the Agent as soon as may be practicable and in any case not later than 30 days from the date on which notice of the proposed assignment and accompanying information is given to the Body Corporate's secretary.
- 5.3 The Body Corporate shall be entitled to require as a condition of consent that the assignee executes in favour of the Body Corporate a deed of covenant to perform observe and fulfil the terms covenants and conditions on the part of the Agent herein expressed or implied to be performed observed or fulfilled. Where the assignee is a corporation the Body Corporate shall be entitled to require that the directors of the assignee shall execute the deed of covenant shall be prepared stamped and registered by the solicitors for the Body Corporate at the expense of the Agent. The Agent shall not be entitled to assign his interest in any manner other than strictly as provided herein.

## **6 Company Agent's nominee**

---

- (a) The Body Corporate agrees that in the event that the Agent from time to time is a corporation or a partnership then the Agent shall from time to time appoint a nominee or nominees.
- (b) The Agent shall perform all of its duties or obligations hereunder through the nominee or nominees.
- (c) The nominees shall have all the rights authorities and powers given hereunder to the Agent.
- (d) The Agent shall be responsible for any remuneration payable to the nominees.
- (e) Notwithstanding the rest of this clause the Agent shall be liable and responsible for the performance of all acts deeds and things required under this agreement.
- (f) The appointment of the nominee or nominees or any replacement shall be subject to the approval of the Body Corporate which approval shall not be withheld in the case of:
  - (i) a respectable and responsible person capable of performing the Agent's duties under this agreement, or
  - (ii) where there is more than one nominee respectable and responsible person who between them is capable of performing the agent's duties under this agreement.

The onus of proof of such respectability and responsibility shall lie on the Agent.

## **7 Termination by the Body Corporate**

---

Without limiting the statutory rights of the Body Corporate from time to time this agreement may be terminated by the Body Corporate by notice in writing to the Agent in the event that the Agent:

- (a) assigns or transfers or attempts to assign or transfer the rights and liabilities contained in this agreement except in accordance with the other provisions herein; or
- (b) fails or neglects to carry out the contractual duties pursuant to this agreement and such failure or neglect continues for a further period of 14 days after notice in writing shall

have been given to the Agent specifying the duty or duties which the Agent has failed or neglected to carry out and requiring the Agent to perform such duty of duties; or

- (c) engages in misconduct or is grossly negligent in the carrying out or failing to carry out the functions required under this agreement; or
- (d) shall be adjudicated bankrupt or be liquidated or wound up, or
- (e) is convicted of an indictable offence involving fraud or dishonesty or
- (f) is convicted on indictment of an assault or an offence involving an assault; or
- (g) carries on a business involving the supply of services to the Body Corporate or to owners or occupiers of lots without holding a licence or other authority required by law.

## **8 Termination otherwise**

---

Otherwise in the event that:

- (a) either party to this agreement is in default hereunder, and
- (b) the other party shall have given 14 days notice in writing to the party in default specifying the default; and
- (c) the default it has not been remedied within such period of 14 days,

then the party giving such notice may forthwith by notice in writing determine this agreement.

## **9 Notices**

---

- (a) Any notice, demand or other document authorised or required to be given or served pursuant hereto shall be sufficiently given or served if given or served:
  - (i) by delivering the same personally to the addressee; or
  - (ii) by posting same to the addressee by prepaid ordinary post as a letter addressed to the addressee at the addressee's usual or last known place of abode or, if the addressee is in business as a principal, at his usual known place of business; or
  - (iii) in the case of a corporation by leaving same, or by posting same by prepaid ordinary post as a letter addressed in either case to the corporation at its registered office or principal place of business in Queensland; or
  - (iv) in accordance with the procedures set out in any legislation governing the Body Corporate; or
  - (v) in accordance with the procedures set out in section 257 *Property Law Act 1974* (Qld); or
  - (vi) in any other manner recognised by law.
- (b) A notice, demand or other document which is posted shall be deemed to have been served, unless the contrary is shown, at the time when by ordinary course of post same would be delivered.

## 10 Arbitration

---

In the event of any dispute arising between the Agent and the Body Corporate touching upon any matter arising under the terms of this agreement or incidental hereto or relative to the interpretation of any of the provisions hereof then the same shall be settled by an arbitrator to be mutually agreed upon between the parties and in default of agreement then by such arbitrator as may be nominated for the purpose by the President for the time being of the Queensland Law Society Incorporated and the decision of such arbitrator shall be final and binding between the parties and such arbitration shall be carried out pursuant to the provisions of the *Commercial Arbitration Act 1990* (Qld).

## 11 Instructions from Body Corporate to Agent

---

The Committee of the Body Corporate shall from time to time authorise one of its members (**Body Corporate Representative**) to give instructions to and communicate with the Agent on behalf of the Body Corporate and not more than one member of the Committee at any time shall be given authority and the Body Corporate shall advise the Agent in writing details of the member who is for the time being so authorised.

## 12 Agent's leave

---

- (a) The Body Corporate agrees that the Agent may from time to time with the consent of the Body Corporate Committee first had and obtained appoint in writing an appointee for the term specified in the appointment.
- (b) Such consent shall not be unreasonably withheld where the appointee is a responsible and respectable person.
- (c) The appointee shall for the time so specified in the appointment have all the authorities and powers given by this agreement to the Agent.
- (d) The Agent shall be responsible for any remuneration payable to the appointee.
- (e) Notwithstanding any such appointment the Agent shall be liable and responsible for the performance of all acts, deeds and things required under this agreement.

## 13 Financier's protections

---

- (a) The Agent may mortgage or charge the Agent's interest in this agreement to any financier (**Financier**) but the Body Corporate shall not be obligated to recognize the interest of any such financier unless or until notice in writing of the name and address of the financier signed by the Agent has been delivered to the Body Corporate.
- (b) A Financier shall have the rights of a financier as set out in section 110 *Body Corporate and Community Management Act 1997* (Qld) irrespective of any amendment to or repeal or replacement of such section.

## 14 Right of first refusal

---

Upon expiry or termination of this agreement or any extension or renewal thereof for any reason other than the default of the Agent the Body Corporate agrees that it shall not enter into any

Agreement (**Offered Agreement**) with any person or corporation (**another party**) other than the Agent containing any of the terms and conditions contained in this agreement or any terms or conditions similar to any of terms and conditions contained herein without first making an offer to the Agent to enter into an agreement and allowing the Agent a period of 14 days from the date on which the offer is delivered (**offer period**) to accept or reject such offer. Such offer shall be made by the delivery by the Body Corporate to the Agent of an agreement in the same terms as the Offered Agreement. Acceptance of the offer by the Agent shall be constituted by the delivery of such agreement duly executed by the Agent to the Body Corporate within the offer period. In the event that acceptance does not take place within the offer period then it shall be deemed to have been rejected by the Agent. The provisions of this clause and any provisions herein relating to the giving of notice shall remain in full force and effect notwithstanding expiry or termination of the remaining provisions of this agreement.

## **15 No premiums chargeable**

---

The Body Corporate shall not make any charge or require payment of any money (except for its legal, secretarial or out of pocket costs) in the event of any assignment, extension or renewal of this agreement.

## **16 Costs**

---

The costs of preparation and stamping of this agreement shall be borne by the Agent.

## **17 Severance**

---

All rights duties or obligations given or imposed to the extent that they are lawful and if at any time, any provision hereof is, or becomes illegal, invalid, unenforceable or void in any respect then that provision shall be ignored, read down or severed respectively so far as is possible at the same time preserving the essence of the bargain between the parties hereto and evidence by these presents, so as to uphold the legality and validity and enforceability of the remaining provisions hereof.

## Execution

EXECUTED as an agreement

The common seal of  
Body Corporate for V77 Community Title Scheme is  
affixed pursuant to a resolution of the Body  
Corporate under the hands of the Secretary and a  
Member of the Committee on     /     /20     :

^ \_\_\_\_\_  
Signature of authorised person

^ \_\_\_\_\_  
Signature of authorised person

^ \_\_\_\_\_  
Name of authorised person

^ \_\_\_\_\_  
Name of authorised person

^ \_\_\_\_\_  
Office held

^ \_\_\_\_\_  
Office held

### Executed by Agent

Executed by  
[#insert name and ACN] on     /     /20     by:

^ \_\_\_\_\_  
Director

^ \_\_\_\_\_  
Director/Secretary

^ \_\_\_\_\_  
Full name of Director

^ \_\_\_\_\_  
Full name of Director/Secretary

## Part 9

Terms of authorisation of a person as service contractor

---

A copy of the proposed service contractor agreement follows this page.

STATEMENT PREVIOUSLY REPRESENTED BY UOAQ REGARDING ACT MODULES.

Starting with the Management Module for the building. The owners of the building (unit owners) are not given the opportunity to decide under which management module they want to live, or even if they want a resident caretaker/letting agent. Furthermore the Act precludes the Body Corporate from making any profit from sale of Caretaking/Letting rights to their own building. (S112; 113; 114 and 115). The Management Module for a residential/accommodation building may be either the Standard Module with a maximum 10 year Caretaking/Letting Contract, ( a \$1M or greater contingent liability to the body corporate) or, the Accommodation Module with a maximum 25 year Caretaking/Letting contract (a contingent 2.5M or greater liability to the body corporate).

The module to be assigned to the building is decided by the developer to a set of guide lines in the Act that at first reading appear to be clear (s21); however, there is a small clause in the Accommodation Module that states: "the lots included in the scheme were intended to be predominantly accommodation lots". This clause is vague and non-definitive and places the legislation in the realm of a persons intent of mind. AM 3(2)(b)(ii). This is an escape clause for a developer who incorrectly classifies a building, as the 25 year Accommodation Module instead of the 10 year Standard Module, to maximise his return from the sale of the Caretaking and Letting agreement.

This situation has become established through lack of legislation defining the responsibility of any Government Department or Agency to monitor and enforce the correct categorisation of buildings and their use. The BCCM module to be applied to a building is determined by the developer (original owner) as part of the first community management statement. Naturally the developer will choose the module most advantageous to his purpose, and there is no responsible authority to ensure that the module is within the intent of the legislation.

BCCM Act Section 60 (1) requires a "Local government management statement notation"; but Section 60 (2) states: "In a community management statement notation a local government states only that the local government has noted the community management statement."

The Registrar, under the Land Title Act, records the first community management statement establishing the scheme of management. The Land Title Act 1994 Section 54D allows the Registrar to examine the building management statement for its validity, but there is no obligation on the Registrar to do so.

Thus the two government check points are reduced to 'all care but no responsibility'.

Moreover, there is no penalty on the Developer for this transgression of the regulation. But the Unit owners have to pay for 25 years for the Caretaker to amortise the additional cost of buying a 25 year depreciating contract. This is the way the BCCM Act is currently written. If a Body Corporate proves that they are under the wrong module, that is the Accommodation Module instead of the Standard Module, and the module is changed from the Accommodation to the Standard, the body corporate is still encumbered with a 25 year contract, not the 10 year contract they should have been under. This is to protect the Caretaker - at the detriment of the Unit Owners who have to pay the extra 15 years of contract costs. (S128) This is not in public interest! This is not consistent with the rights and liberties of individuals?

The problem starts because the Developer gets to sell the Caretaking and Letting Agreements when it is the Unit Owners who own the building. Section 35 (1) states: "Common property for a community titles scheme is owned by the owners of the lots included in the scheme,." That being the case the body corporate should be empowered to sell the Caretaking and Letting rights on terms agreed by the Unit Owners. The owners may not want a resident caretaker, or a letting agent. The owners may give the letting rights to a person in exchange for him caretaking the building - thus saving the caretaker/letting agent a lot of money by not having to buy the rights and the owners a lot of money by not having to pay the caretaker. This would be in the public interest!

A recent NSW Supreme Court Decision Community Association DP No 270180 v Arrow Asset Management Pty. Ltd. & Ors [2007] NSWSC 527 found that:

Developers must not place themselves in a position of conflict or to profit from contracts entered into between the Body Corporate and Caretakers, without proper disclosure.

Must not act to the detriment of the body corporate.

If they do, they breach fiduciary duty and/or common law duty.

Any right thinking person can conclude that it is unconscionable for the developer to incur a future liability against the body corporate for his own financial benefit and enrichment?

# SHOPPING CENTRE

COUNCIL OF AUSTRALIA

Property Occupations Bill 2013  
Submission 002

17 December 2013

Research Director  
Legal Affairs and Community Safety Committee  
Parliament House  
George Street  
Brisbane QLD 4000

Dear Sir/Madam,

## **Clauses 7 and 8 of the Property Occupations Bill 2013**

### **1. Summary**

The Shopping Centre Council of Australia (SCCA) wishes to comment on Division 2 (Exemptions) of the *Property Occupations Bill 2013* ("the Bill"), which exempts from the Act both 'related entities' (Clause 7) and 'large scale non-residential property transactions or holdings'. We strongly support this correction of an 'historical accident' which will reduce costly red-tape on Queensland property businesses (see Appendix 2.)

At present anyone involved in buying, selling, leasing or managing property for someone else must be licensed and comply with the *Property Agents and Motor Dealers Act 2000* ("PAMDA"), even if they are a subsidiary or a related entity to the property owner. The aim of the PAMDA is to protect property owners in their dealings with property agents (property managers). This is continued in the Bill.

This is valid for residential property owners and may be valid for some small commercial property owners where the 'consumers' (i.e. property owners) are individuals and small businesses with limited knowledge of real estate practices and who may be vulnerable to property agents. It is not valid for the sophisticated segment of the commercial property industry where the 'consumers' being protected are large national (and multinational) professional property-owning entities which are more than capable of looking after their own interests. (Individual investors in these entities are protected by Commonwealth regulation of companies, trusts and managed investments.)

The Act's requirements impose significant costs on these professional property owners and managers, for no benefit to these owners, or to their tenants or to the public more generally. These include prescriptive rules on the signing of cheques and the writing of receipts; the collection and banking of rents; and the maintenance of trust accounts. In addition, staff must also undertake prescribed professional development courses which provide no relevant professional training for shopping centre staff or commercial office staff. We have accurately assessed these costs to Queensland commercial property owners as being more than \$2.4 million a year (see Appendix 1).

The Bill exempts (in Clause 7) property agents who are managing property on behalf of 'related entities' since no proper agency relationship exists between the owner and the agent. The Bill also exempts (in Clause 8) 'large property owners' who do not need, nor want, the protections of licensing and regulation. These owners fully understand the risks that may be involved in commercial property transactions and have the ability, through legal and commercial avenues, to protect themselves against transactions which might go wrong. These exemptions will reduce the regulatory burden on Queensland property businesses and free owners and managers from costly and unnecessary red tape. This reform would also generate savings for the Government by reducing the staffing resources necessary to administer and enforce the new Act. Most importantly, this reform would not involve risks to tenants or to the wider community in Queensland. We elaborate on this in sections 2, 3 and 5 of this submission.

ABN 41 116 804 310

*Shopping Centre Council of Australia Limited*  
Level 1, 11 Barrack Street Sydney NSW 2000  
Telephone: +612 9033 1902 ~ Facsimile: +612 9033 1976 ~ [www.scca.org.au](http://www.scca.org.au)

## **2. Clause 7. Exemption for entities which manage property on behalf of related entities**

People or entities which directly sell, manage or lease their own commercial property do not need to be licensed since there is no agency relationship. However when, because of the organisational structuring of large businesses, the buying, management or leasing of such property is not performed directly, but through a related entity, such agents are required to be licensed, even though there is still no proper agency relationship between the owner and the manager.

It is obviously absurd, and was never the intention of the PAMDA, that employees of, say, Westfield Shopping Centre Management are required to be licensed when managing or leasing shopping centres on behalf of the Westfield Group or that employees of AMP Office and Industrial must be licensed when managing and leasing offices on behalf of AMP Capital Investors. This is the bizarre situation that exists today, however.

The need for an exemption for 'related parties' has been recognised for many years. The National Competition Policy review of the Victorian *Estate Agents Act*, found that *"the costs of the current provisions [of the regulation of the Estate Agents Act] reserving property management, commercial property sales, and business sales to licensed agents exceed the benefits"*. The NSW Statutory Review of the *Property Stock and Business Agents Act* in 2008 also recommended *"that commercial property agents who sell or manage property for a related corporate entity should be exempted from the Property Stock and Business Agents Act."* This followed a recommendation by the NSW Independent Pricing and Regulatory Tribunal in 2006, following its investigation of the burden of regulation in NSW. IPART recommended that the Government consider *"exemptions from requirements for commercial property agents who are managing the property of a related company"*.

The need for such an exemption has also been recognised at the national level. In the deliberations in relation to the (then) proposed national license for real estate agents, the *Decision Regulation Impact Statement: Proposal for national licensing for property occupations* ("the Decision RIS") in July 2013 noted *"an exemption from engaging a licensed real estate agent for non-residential property transactions between related entities has received full support from industry"*. The RIS therefore proposed *"an exemption from the requirement to hold a real estate agent's licence or agent representative registration for non-residential property transactions between related entities"* (p.29).

Despite this constant recognition that entities which buy, lease or manage properties on behalf of a related entity should be exempt from the relevant state or territory estate agents legislation, Queensland is the first state to take action to correct this costly anomaly. The decision by COAG on 13 December 2013 not to proceed with the National Occupational Licensing System (NOLS) means it is even more important for the Queensland Government to proceed with the exemptions proposed in Clause 7 and Clause 8 of the Bill. The same COAG meeting noted in the Communique that *"all governments agreed to work in their own jurisdictions to improve regulation and remove unnecessary red tape"*. The exemptions proposed in the Bill are a concrete demonstration of the Queensland Governments commitment to this COAG decision.

**We therefore strongly support Clause 7 of the Bill which will lead to a significant reduction in unnecessary business red tape in Queensland.**

### **3. Clause 8. Exemption for agents managing on behalf of large property owners**

The fact that there are risks in commercial real estate transactions – as there are in all business-to-business transactions – does not mean that such transactions should be regulated by governments (in this case by means of licensing and compliance with PAMDA and its replacement). This is most certainly true for financially sophisticated property owners who fully understand the risks involved in property transactions.

A 'related entity exemption' under Clause 7, while being a significant advance in removing unnecessary and costly business regulation, is not in itself sufficient to remove burdensome regulation. Some large property owners, who do their own management through a related entity, will be free of the cost of licensing requirements and associated regulation. Other major property owners, who choose to use an external agent for the management of their properties, would still ultimately bear the cost of unnecessary licensing requirements and regulation.

As an example, one of our members (which owns five large shopping centres in Queensland, including three in Brisbane, and is also a major owner of shopping centres and office property in other States) would be at a disadvantage in the management and leasing of its shopping centres because it engages an independent shopping centre manager (and therefore ultimately bears the costs of continuing regulation) compared to a competitor shopping centre owner which manages through a related entity. Another of our members, which uses external property agents to manage a number of its office properties in Queensland, including in Brisbane, would also be at a disadvantage compared to a competitor which manages its own office properties through a related entity. This obviously makes no sense.

Large shopping centre owners, and large owners of commercial property, are not ordinary consumers who need or want legislative protection. Property ownership is their business and they employ large staffs to ensure their interests are protected. Their relationship with their property manager (agent) is a professional, business-to-business relationship, not a business-to-consumer relationship. They have recourse to legal and commercial avenues if a property transaction goes wrong. The risks in the owner-agent relationship should therefore be a matter for commercial negotiation between the parties, not a matter for regulation by government.

There are legislative precedents, at both the state and national level, for treating certain persons as 'sophisticated consumers' who do not require legislative protection. In the regulation of retail leases in Queensland, for example, those retailers which are public companies and whose shop footprint exceeds 1,000 square metres, are considered to be sufficiently large as to not require the protection of the *Retail Shop Leases Act* in their negotiations with their landlords. (Similar thresholds also apply in retail tenancy legislation in other States and Territories). Similarly, in Western Australia a 'sophisticated borrower' is exempted from certain legislated protections in the *Finance Brokers Control (Code of Conduct) Regulations*. A 'sophisticated borrower' is a "person who regularly engages in and is conversant with loans of money (secured or unsecured) and by the person's experience over a reasonable period of time, may be expected to fully appreciate and understand the risks involved and their consequences". Such a 'sophisticated borrower' must have net assets of at least \$2.5 million or have a net income for each of the last two financial years of at least \$250,000 a year.

Nationally the *Corporations Act* recognises that some investors are 'sophisticated investors' who do not require certain disclosure protections that are required for ordinary retail investors. A sophisticated investor is deemed to have sufficient investing experience and knowledge to weigh the risks and merits of an investment opportunity without regulated protection. A 'sophisticated investor' must have net assets of at least \$2.5 million, or have had a gross income of \$250,000 or more in each of the previous two years. The *Corporations Act* also defines a 'professional investor', who is also exempted from various regulatory protections, as a person with net assets of at least \$10 million.

The Bill provides in Clause 8 that certain property owners should be acknowledged, in effect, as 'sophisticated' property owners, that is, owners who regularly engage in property management, leasing and sales and who therefore understand the risks and consequences that may be involved in such transactions. Such a 'sophisticated consumer' need not engage a licensed real estate agent to manage, lease or sell their property.

The principle of such a 'sophisticated consumer' exemption was also acknowledged in the Decision RIS: "*The risks in large non-residential property transactions appear to be adequately managed through the general sophistication of clients and trajectories, such as legal contracts and agreements. Licensing would be unnecessary for this sector as owners of multi-million dollar commercial properties would most likely be professional property investment companies. These companies would be conversant in the business of understanding the risks of owning and investing in non-residential property assets. An exemption would mean that there would be no requirement to go through a licensed real estate agent for very large non-residential property transactions.*" (p.28).

**We therefore strongly support Clause 8 of the Bill which will also lead to a significant reduction in unnecessary business red tape in Queensland.**

#### **4. Regulations**

Clause 8 of the Bill provides that the thresholds relating to 'total gross floor area' and 'total estimated value' will be prescribed by regulation. While it is unlikely that the 'total gross floor area' threshold will be diminished over time (just as, for example, the 1,000 square metre threshold in the *Retail Shop Leases Act* has not been affected over time) it is possible that the 'total estimated value' will be affected by the inflation of property values over time. We therefore support the nomination of these amounts by regulation.

We would point out, however, that the most relevant threshold for determining whether or not buying, selling, leasing or management of real property will be exempt from the Act will be the 'total gross floor area' thresholds in Clause 8.

**We support the thresholds for exemptions nominated in Clause 8 of the Bill being set by reference to a regulation.**

## **5. Tenants would be unaffected by the exemptions being sought**

It is occasionally claimed that the PAMDA (and, presumably, the forthcoming *Property Occupations Act*) needs to continue to regulate agents managing on behalf of large property owners and even related entity property owners because the PAMDA also protects tenants. According to this argument, an agent (acting on behalf of an owner) could be found guilty under the misconduct provisions if they engaged in misconduct. However, this argument does not explain how this action would provide relief to a tenant (as opposed to an owner). Nor does it explain what protection is offered to those tenants of a property whose owner handles property management directly (not through an agent) and who is therefore not regulated by the Act.

Retail tenants are directly protected against actions of landlords (and their agents) by the *Retail Shop Leases Act*, not by the PAMDA or the Bill. The *Retail Shop Leases Act* (which is currently being reviewed by the Queensland Government) provides minimum lease protections for a tenant in a wide range of areas beginning even before a lease is signed. If the lease does not meet these minimum protections, the Act overrides the provisions of the lease. The *Retail Shop Leases Act* also provides low-cost mediation of retail tenancy disputes.

The *Retail Shop Leases Act* also specifically provides:

- Section 22 – that a tenant who was not given a disclosure statement, or given a disclosure statement that was incomplete or false or misleading, may terminate the lease within 6 months of it being entered into;
- Section 43 – a right to compensation for a tenant as a result of a range of actions being taken by a landlord or an agent;
- Division 8A – unconscionable conduct provisions (drawn down from the *Competition and Consumer Act*).

**The claim that the PAMDA is a protection for tenants is wrong. The Queensland Parliament would not have passed the *Retail Shop Leases Act* if the PAMDA was a protection for tenants.**

## **6. Shopping Centre Council of Australia**

The Shopping Centre Council of Australia represents the major owners, managers and developers of shopping centres. Our members own more than 100 shopping centres in Queensland. In addition our two independent shopping centre manager members, Jones Lang LaSalle and Savills, are responsible for the management of other shopping centres in Queensland which are not owned by SCCA members.

Our members are AMP Capital Investors, Brookfield Office Properties, Charter Hall Retail REIT, Colonial First State Global Asset Management, DEXUS Property Group, Eureka Funds Management, Federation Centres, GPT Group, ISPT, Ipoh Management Services, Jen Retail Properties, Jones Lang LaSalle, Lend Lease Retail, McConaghy Group, McConaghy Properties, Mirvac, Perron Group, Precision Group, QIC, Savills, Stockland, Westfield Group and Westfield Retail Trust.

The Shopping Centre Council would be happy to appear before the Committee to elaborate on any aspect of this submission. Please do not hesitate to contact:

**Milton Cockburn**

Executive Director  
Shopping Centre Council of Australia  
Level 1, 11 Barrack Street  
SYDNEY NSW 2000  
Phone: 02 9033 1902  
Mobile: 0419 750 299  
Email: [mcockburn@scca.org.au](mailto:mcockburn@scca.org.au)

**Angus Nardi**

Deputy Director  
Shopping Centre Council of Australia  
Level 1, 11 Barrack Street  
SYDNEY NSW 2000  
Phone: 02 9033 1930  
Mobile: 0408 079 184  
Email: [anardi@scca.org.au](mailto:anardi@scca.org.au)

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Milton', written over a light blue horizontal line.

Milton Cockburn  
**Executive Director**

## **Appendix 1**

### **Cost of regulation and licensing**

Last year the SCCA surveyed a sample of our members to establish the annual costs of the requirements of licensing and other obligations of the various Estate Agents Acts around Australia. We asked these members to quantify the costs of annually renewing qualifications; continuing professional development; and the auditing of real estate trust accounts. This information, and the basis on which costs were apportioned (including employee time), was included as an Appendix to our submission on the *Consultation Regulation Impact Statement: Proposal for national licensing for property occupations*. We are happy to supply a copy of this to the Committee if necessary.

We did not attempt in these calculations to assess the costs of a range of other unnecessary requirements including the plethora of rules on the signing of cheques, receipts and the collection and banking of rents; the establishment and maintenance of separate trust accounts in each state; and the organisational restructuring and organisational inefficiencies often necessary to meet state licensing requirements. Nor did we include in these costs the amount of interest 'foregone' by property owners as a result of interest from the trust accounts being directed into the statutory interest accounts (the claim fund in Queensland), instead of being money earned by the property owner.

Nor did we seek to quantify the management time involved in implementing and overseeing systems to ensure compliance with the legislation. This includes the following: identifying who requires a licence/salesperson certificate (which can be difficult as both roles and people change); maintaining an up-to-date register of people and roles; organising a basis level of training for all affected employees; ensuring directors of the property management entity hold licences where required; and reporting to the board of the property management entity on all of these issues.

These additional requirements and consequences of regulation add considerably to the costs we have directly measured.

[Nor, incidentally, do these costs take into account the additional costs to the commercial property industry of being required to upgrade to a diploma level the qualifications of future real estate staff in Queensland (and in NSW, Victoria and the ACT), if the Real Estate Institute of Australia is successful in its demand for diploma level qualifications for real estate agents. From the RIS data, it can be estimated that this would cost the real estate industry in these jurisdictions up to \$15.5 million a year and it can be assumed that Queensland's share of this cost would be around \$3 million a year. Similarly the REIA's demand that compulsory continuing professional development requirements be imposed in Queensland (and Victoria, South Australia and the Northern Territory) would, if adopted, add up to \$40 million in annual costs in these jurisdictions and it can be assumed that the Queensland's share of this cost would be around \$8 million a year.]

On the basis of our sample of members we have estimated, with reasonable accuracy, that the licensing, professional development and trust account regulation requirements alone are currently costing SCCA members around \$3.62 million a year. Since SCCA members own around 60% of the total gross lettable area of Australian shopping centres, a reasonable estimate of the cost of this regulation for the Australian shopping centre industry is around \$6 million a year.

This cost of \$6 million a year is the cost only to the shopping centre sector of the Australian commercial property industry. Since retail property accounts for around 40% of the commercial property industry<sup>1</sup>, and office property accounts for roughly a similar proportion, the total cost of licensing and regulation for the commercial property industry would exceed \$12 million a year. It can reasonably be assumed that the cost in Queensland exceeds \$2.4 million a year.<sup>2</sup>

Where possible, of course, such costs are passed back to the owner of the property through the commissions and management fees they pay. This is particularly frustrating since the only reason these property owners are incurring these costs is to protect themselves against the agent or property manager they have personally chosen, which is often a related corporate entity to the owner, and with whom they have a detailed and legally enforceable commercial contract.

The exemptions from the Act proposed in the Bill would therefore bring major benefits to investors in superannuation funds, real estate investment trusts, managed investment trusts, life insurance funds and other investment vehicles. Such investors are mainly people who are saving for, or living out, their retirement.

These exemptions would also free up government staff resources currently occupied in licensing, compliance and enforcement. This is an important consideration at a time when Queensland, like all state governments, is struggling to control its budget. Most importantly this reform would come at no significant cost to the community.

---

<sup>1</sup> David Higgins, Nadia Ditrocchio, Nathan Hughes 'Mapping the Australian Property Investment Universe' RMIT 2008

<sup>2</sup> Using the proportion of the Queensland population to the Australian population

## **Appendix 2**

### **Correcting an accident of history**

Two questions should be asked when considering whether work relating to the buying, selling, management and leasing of non-residential real property should be regulated by governments. The first is: "if state governments were moving today to regulate the activities of real estate agents in order to protect the interests of property owners, as they were in the 1940s and 1950s when the various Estate Agents Acts<sup>3</sup> were being introduced, would those governments have considered as an act of policy that the interests of commercial property owners needed to be protected and therefore regulated?

The second is: "would those governments have considered that the interests of financially sophisticated property owners, who have accumulated millions of dollars of commercial property and who fully understand the risks involved in property transactions, needed to be protected and regulated?" The answer to both questions is unequivocally "no".

The coverage of commercial property by the various Estate Agents Acts is an accident of history, not a deliberate public policy decision. When state governments first began regulating real estate agents after World War 2 they were concerned with protecting individuals dealing with their local real estate agents to buy, sell or rent their house. These home owners generally knew little of real estate practices and could be vulnerable to an incompetent or dishonest agent. So the governments started licensing real estate agents to ensure they had the requisite skills, education and 'good character' to minimise the chance that they might take advantage of a client. The governments also introduced numerous rules on how real estate agents should operate, again in an attempt to protect home owners against incompetent or unscrupulous agents. These rules govern everything from the signing of cheques and the collection of rent to the establishment of trust accounts. The governments also set up statutory funds, funded by agents and property owners, to compensate people who lost money because of actions by their real estate agents.

Through the intervening years governments have continued to regulate real estate agents on this basis. Over this period, however, enormous changes have taken place in Australia's commercial environment and the nature of commercial property ownership has changed dramatically. Today's commercial property market is characterised by large companies, real estate investment trusts, superannuation funds, property syndicates and managed investment schemes which own and invest in property across state and national borders. Many of today's large professional property owning companies, such as QIC and Westfield, did not exist when the Queensland Parliament first began regulating the activities of property agents.<sup>4</sup>

If such companies had existed then, and certainly if they had existed in the scale they have today, it is inconceivable that legislators would have decided that such companies needed legislative protection if they engaged an agent to manage their properties. Yet this is the absurd situation we find ourselves in today.

---

<sup>3</sup> These Acts have different titles in each State, such as the Property Agents and Motor Dealers Act in Queensland, the Property, Stock and Business Agents Act in NSW and the Estate Agents Act in Victoria.

<sup>4</sup> The PAMDA was preceded by the Auctioneers and Agents Act 1971 which, in turn, was a consolidation of various other pieces of legislation regulating the activities of auctioneers, real estate agents, debt collectors and motor dealers.

The 'consumers' being protected by the PAMDA and the forthcoming Property Occupations Act are in many cases large national and multinational entities and the relationship between the owner and agent/manager is a commercial, business-to-business relationship where all parties are professionals and fully informed. Indeed, many property managers in this sector are related corporate entities of the property owner. These owners do not need a statutory fund to compensate them if their arrangements with their agents fail but, by historical accident, these owners and managers remain within the purview of regulation designed to protect non-professional owners and buyers of residential property.

In the commercial property market, where properties can be worth hundreds of millions of dollars, property managers and agents negotiate a comprehensive management agreement tailored to the property in question and setting out in detail accounting and audit requirements, the obligations of the property manager, and the requirements for fidelity guarantee insurance and professional indemnity insurance. Significant resources are applied by both parties to ensure these agreements are thorough and comprehensive and in line with the scale and extent of transactions undertaken in the commercial property market. The scope of these agreements extends well beyond the matters addressed in the PAMDA. Given the millions of dollars at stake in the successful management of a shopping centre, these issues are not left to a standardised property management agreement that has been designed with residential property in mind.

If the Queensland Parliament had specifically intended to regulate the activities of the commercial property industry it would certainly have included an exemption, similar to that inserted in the Queensland *Retail Shop Leases Act*, to ensure that the legislation excluded large commercial property owners from the protection of the legislation. The Parliament would also have taken steps to ensure that property agents managing on behalf of a related property owner were not regulated by the relevant legislation. The *Property Occupations Bill 2013* will correct this accident of history.

20th December 2013  
The Research Director  
Legal Affairs and Community Safety Committee  
Parliament House  
George Street  
BRISBANE QLD 4000

GPO Box 2279  
Brisbane QLD 4001  
Level 17, 141 Queen Street  
Brisbane QLD 4000

T: 07 3229 1589  
F: 07 3229 7857  
E: [udia@udiaqld.com.au](mailto:udia@udiaqld.com.au)

[www.udiaqld.com.au](http://www.udiaqld.com.au)

ACN 010 007 084  
ABN 32 885 108 968

**BY POST / EMAIL - [lacsc@parliament.qld.gov.au](mailto:lacsc@parliament.qld.gov.au)**

Dear Committee

### **Property Occupations Bill 2013**

This submission is made to you following an examination by the UDIA (Qld) of the contents of the Property Occupations Bill 2013 (PO Bill) and after consulting with our membership.

The Government is to be commended for demonstrating a strong commitment to remove red tape and reduce the regulatory burden associated with the property sales transaction process.

The Institute is on the record as being concerned that the Property Agents and Motor Dealers Act 2000 (PAMDA) does not achieve the appropriate balance between the facilitation of development and the achievement of consumer protection. Queensland's requirements for the issuing and securing of a compliant contract for the sale of a property are complex and costly relative to other jurisdiction but, in our view, with no added consumer protection advantage.

The Institute particularly welcomes the following red tape reduction proposals:

- The removal of licensing requirements for property developers and their employees.
- The removal of warning statement requirements: The integrity of contracts is essential to residential property transactions and markets. The efficiency and efficacy of the processes for the formation of binding contracts in respect of residential property has a significant impact on the viability of transactions and investment in development of residential property. Ultimately the efficiency of these regulations impacts on the affordability of residential product by adding to the cost and risks. The UDIA (Qld) therefore strongly supports the removal of the requirement to provide warning statements as a separate document attached to the contract. The removal of this requirement will reduce transaction costs and lower risks associated with contract enforceability. It was unacceptable that under PAMDA contract validity could be determined by reference to the concept of physical attachment to a contract of the statutory warning statement. The order in which pages appear or how they are bound adds nothing in terms on consumer protection.
- The removal of the requirement that licensees be in charge of an agent's sales office at each place of business when sales on behalf of a development occur: The PAMDA required that licensees be in charge of an agent's sales office at each place of business when sales on behalf of a development occur. The UDIA (Qld) has long been on the record

as deeming this requirement to be commercially impractical in most cases. The costs of employing a fully licensed person to supervise perhaps only one other person and only at one location is prohibitive. We therefore welcome the proposal to require only a principle licensee at the registered office and a registered salesperson in charge at a place of business.

- Provision of some exemptions for 'sophisticated' parties

Each of these changes will, in our view, reduce risks and costs associated with the property sales process without reducing consumer protections.

The Institute supports in principle the legislative changes being proposed. We do, however, urge the Committee to consider the following:

### **Definition of residential property**

The UDIA (Qld) is of the view that the definition of residential property in PAMDA and in section 15 of the exposure draft PO Bill released in early 2013 is too wide, unclear, and captures transactions that need not be the subject of regulation. The case of *Hedley Commercial Property Services Pty Ltd v BRCP Oasis Land Pty Ltd [2008] QSC 261* involving two commercial parties served to highlight that the definition of residential property under PAMDA is incredibly difficult to interpret and, therefore, to comply with. In our submission on the exposure draft PO Bill, the Institute was concerned that proposed Section 15 would continue to provide significant headaches in the sale of 'off the plan' residential products and in particular multimillion dollar transactions. The Institute at the time recommended that section 15 of the draft PO Bill be amended to include an exhaustive list of what is not residential property (for example, where the primary use is industry, commerce or primary production), with anything that is not included in this exhaustive list deemed to be residential property for the purposes of the Act.

The Institute regards the simplified definition of residential property in section 21 of the PO Bill as an improvement and welcomes the exemptions from the residential sales contract provisions for contracts where the buyer is a publicly listed corporation (or subsidiary), a State or statutory body, or where the buyer is purchasing three or more lots at the same time.

The Institute does, however, still have concerns with the revised definition in section 21 of the PO Bill. Our concerns relate particularly to the words 'intended to be used'. Take, for example, the sale of a property with a commercial use but in an area zoned residential. In this circumstance, is the seller expected to ascertain whether the intention of the buyer is to change the use to residential? Could the buyer terminate the contract if the seller didn't ascertain the buyer's intentions? A potential consequence of the use of the term 'intended to be used' is that sellers will take an overly cautious approach and include all transactions where there is any potential for that property to change its use to residential.

The Institute recommends including exemptions from the PO Bill for high value transactions to partially address the concerns raised above. Specifically it is recommended that transactions valued at over \$2m should not be caught by the PO Bill. This will assist with the uncertainty regarding whether some properties are 'residential' or intended to be used as 'residential' for the purposes of the PO Bill such as mixed-use developments and commercial properties which are located in residential zoned areas. A further benefit of introducing a value threshold of \$2m is that it will ensure sophisticated buyers are not unnecessarily caught up in the provisions of the PO Bill. It is the Institute's view that buyers entering into transactions of over \$2m can safely be assumed to be sophisticated buyers with access to good legal advice and not in need of the protections in the PO Bill.

## **Commissions and Form 27c disclosure requirements**

The Institute welcomes the deregulation of commissions in the PO Bill and the removal of the requirement for developers engaging an agent to sell new residential property to disclose these commissions on the Form 27c. In a submission on the draft PO Bill in early 2013 the Institute highlighted the damaging effects on property valuations and sales of the Form 27c disclosure requirements (our comments are reproduced in Appendix 1 for the benefit of the Committee).

Whilst we acknowledge that some benefits will continue to be required to be disclosed and a Form 27c or similar will still exist, we are confident that a combination of the deregulation of commissions and the disclosure exemption for these commissions will sufficiently address the concerns outlined in Box 1.

## **Property Developer requirements in relation to marketing**

The PO Bill proposes to continue to regulate property developers in respect of activities they undertake to 'market' residential properties and in respect of receipt of payments. These provisions retain the notion that a property developer who 'markets' (i.e. promotes for sale other than by using an agent) residential property must "hold an interest of at least 15% in the property".

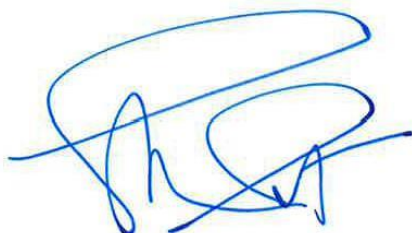
The Institute cannot see any sound policy reason to retain these provisions as there are other very broad provisions in the PO Bill and other legislation governing the activities of any entity or individual involved in making statements about land or promoting sales of residential property (in terms of misleading or deceptive conduct and unconscionable conduct). These other provisions are more than sufficient for the protection of consumers.

## **Ongoing Consultation**

UDIA (Qld) appreciate the opportunity to comment on the Property Occupations Bill 2013 and would welcome the opportunity to comment on future amendments to Regulations and on other documents that give effect to the objectives of the Bill.

Yours sincerely

**Urban Development Institute of Australia (Queensland)**

A handwritten signature in blue ink, appearing to be 'Marina Vit', written in a cursive style.

Marina Vit

**Chief Executive Officer**

## APPENDIX A - Extract from UDIA (Qld) draft PO Bill submission

Form 27c disclosure requirements were introduced at a time when there was concern that very large commissions were being paid to attract interstate investors to Queensland who subsequently paid in excess of fair market value for a property.

Since these requirements were introduced, the increased availability of market intelligence and online resources means that, in our opinion, a non-local buyer has a reasonable opportunity to inform themselves of the likely value of a property. It is therefore the view of UDIA (Qld) that in today's market place the consumer protection arguments for the disclosure of benefits in Form 27c are weak.

The greatest concern that the Institute has in regards to disclosures in Form 27c is the reported misuse of the information by Valuers and the subsequent damaging effects on property valuations and sales.

The Institute has been receiving widespread feedback from its members that valuations prepared for the purposes of a prospective buyer receiving finance are often inconsistent and do not reflect market value, particularly in relation to new developments.


With regards to marketing costs, the Australian Property Institute (API) in a guidance note to Valuers states that *"The valuation should have primary regard to comparable evidence that did not include any such non-standard marketing costs or inducements"*. UDIA (Qld) is aware that it is standard practice for Valuers to make the assumption that 2.5% is a 'standard marketing cost' and that any excess marketing costs beyond 2.5% that are reported in Form 27c are being used to adjust down the assessment of the value of a property. While 2.5% marketing costs may be appropriate for second hand property, a survey of our members indicates that marketing costs of approximately 5% are standard for new product.

In a recent survey of our members, 80% reported instances where the valuation of a new property was greater than 10% below the contracted price (out of a sample of 96) with the most common consequence being that the sale fell over. Feedback from UDIA (Qld) members and discussions with stakeholders in the valuation process indicate that disclosures of marketing costs in Form 27c are a significant contributing factor to these lost sales.

The reliance by Valuers on information contained in Form 27c is also resulting in inconsistencies in the valuation process due to the fact that some developers outsource their marketing and others do not. Form 27c does not require internal marketing costs to be reported and therefore the developers who outsource marketing are being hurt in the valuation process. Smaller developers are particularly disadvantaged as they are most likely to engage external consultants.

In conclusion, the Institute recommends the abolition of Form 27c on the basis that –

1. The historical rationale for the introduction of Form 27c is weak in the modern market place.
2. The information is being misused for the purposes of conducting property valuations resulting in lost sales due to low and inconsistent valuations.
3. No other Australian jurisdiction imposes these disclosure requirements.



03 January 2014

Research Director  
Legal Affairs and Community Safety Committee  
Parliament House  
George Street  
Brisbane Qld 4000  
Email: [lacsc@parliament.qld.gov.au](mailto:lacsc@parliament.qld.gov.au)

Dear Sirs,

**Re: Property Occupations Bill 2013  
Motor Dealers and Chattel Auctioneers Bill 2013  
Debt Collectors (Field Agents and Collection Agents) Bill 2013  
Agents Financial Administration Bill 2013  
Fair Trading Inspectors Bill 2013**

In the interests of brevity, this submission is confined to the Property Occupations Bill 2013 and the Attorney General's introductory remarks as to the contents of that Bill, so far as they have implications for the Body Corporate and Community Management Act 1997 and those unit owners impacted either directly or indirectly.

Specifically the Bill:

- Deregulates resident letting agent commission rates.
- Removes the requirement for a resident letting agent to live on-site.
- Allows resident letting agents to manage more than one building.
- Removes the requirement for a resident letting agent to satisfy the chief executive that they have body corporate approval and that they will live onsite to be eligible for a licence.
- Consolidates and rationalises the licence categories.

**Deregulating resident letting agent commission rates.**

This proposal removes consumer protection and any semblance of a fair commission rate. It will pit a collective of professional letting agents against individual unit owners, many of whom are resident interstate or overseas and have no concept of fair commission rates in Queensland. This places the balance of power in the hands of the Australian Resident Accommodation Managers Association (ARAMA). Letting agents have a vested interest in achieving the highest possible commission rate and, this is without the pyramid commissions currently being applied by travel agents and letting agents where 12% legislated commission rates are being jacked to 25% by dishonest letting agents. This money comes from the pockets of unit owners.

Deregulating fees or commissions has never worked. Solicitors charge what they want. Accountants charge what they want. In the case of the CPA the institute will not even investigate over charging by accountants. Doctors charge what they want and fuel

companies charge what they want. In all these examples costs to the consumer have risen to almost unaffordable levels. In the case of overcharging the professional associations claim that the charges are a civil contract between the supplier and the consumer, and the correct course of dispute action is legal redress in the courts. The cost of court action often exceeds any likely refund and therefore is not a viable option. The consumer is again left with no redress.

If the Committee considers this to be an exaggeration, then examination of the numerous cases of bodies corporate trying to rid themselves of ARAMA members should be investigated. Hundreds of thousands of dollars have been wasted by bodies corporate with no, or, limited success.

Moreover, if there is no regulation of commission rates, there is no recourse to the Office of Fair Trading (OFT) for unit owners to complain and get protection under the law – there being no law. Even with a regulated 12% commission rate, prosecutions have been very difficult to achieve. When they were achieved, the penalties handed down by the courts have not matched the extent of the crimes. This was demonstrated by the Phoenician Caretaker/Letting Agent prosecution when they were revealed as defrauding unit owners of rental income by inflating letting commissions. Also the recent Carmel by the Sea prosecution of the Caretaker/Letting Agent for diversion of letting unit owner's funds to their own lease back units. In both these cases the punishment was miniscule in comparison to the unit owner's funds misappropriated by the letting agents. Proving that in Queensland under the PAMDA Act crime does pay. Both of these prosecutions were corporate letting agents with more than one building under their corporate control, and were allowed to retain their letting license. In the Carmel by The Sea case, before entering court, OFT and Staymint's Legal Advisers (SLA) had negotiated an agreed settlement of a \$35,000 fine, but would not disclose this in discussions with Carmel representatives before entering the court. The Carmel representatives were not able to obtain a copy of the charge sheet prior to the matter being heard. Staymint pleaded guilty to all 231 charges. The judge was highly critical of the OFT and confirmed the maximum penalties could have been up to \$25M, so increased the fine to \$50,000, but no conviction recorded against the company so their licence is not at risk.

In The Phoenician matter, again the matters were not determined by the court, but negotiated settlements were reached. The settlements included an admission by the accused and fines, and recovery of the OFT legal expenses. In The Phoenician case the exposure was \$44 million and the fine was \$130,000. With Carmel, a fine sought of \$35,000 and an exposure to almost \$3.5 million. Letting Agents must be discouraged from misconduct, by imposing penalties greater than 1% to 0.3% of potential profits from crime.

Currently full payments from guests are not disclosed to unit owner clients, and rental revenue is frequently passed through associated companies of letting agents, subjected to significant commissions (around 25%) without disclosure of those commissions to the clients of the letting agent. Letting agents also make charges against rental revenue of clients without disclosing the mark up they have imposed on the actual cost incurred. There appears to be nothing in the Bill to curtail this wide spread practise.

Rather than deregulating letting agent commission rates, the regulators would be well advised to increase regulation and punishment for fraud against clients.

### **Removing the requirement for a resident letting agent to live on-site.**

This proposal is contrary to the original concept of resident caretaker/letting agents holding limited real estate licenses. The Committee should hold serious reservations as to the service levels provided to tourists if the letting agent is not accommodated on site. Moreover, the enforcement of by-laws and proper conduct of visitors and residents, currently the responsibility of letting agents, has not been addressed in the Bill.

The purpose of the original concept of resident letting agents was to provide 24 hour security and services to buildings. Especially those residential buildings that provide tourist accommodation. In Queensland many class 2 permanent residential buildings are misused for short term tourist accommodation without suitable modification of the fire detection and alarm system, that is only designed for permanent residential occupation buildings. In the event of a fire, without an onsite letting agent or caretaker, there will be no direction of guests to the fire escapes or fire refuge areas. Moreover, many of the misused class 2 buildings do not have a direct fire alarm connection to the fire service. Therefore, a telephone call is required to call the fire service. A telephone call that has, until this Bill, been the responsibility of the caretaker/letting agent.

### **Allowing resident letting agents to manage more than one building.**

Again this proposal is contrary to the original concept of resident caretaker/letting agents. Real world experience has shown that in many cases it has been most difficult, if not impossible, to have a letting agent managing one building to perform in an efficient and cost effective manner. Experience has also proven that corporate letting agents managing multiple buildings are far more expensive to the body corporate and letting unit owners for commissions and maintenance of rental units. This is primarily due to the need to employ additional staff as the caretaker letting agent distributes duties such as reception, cleaning, gardening and maintenance to different personnel, whereas the original concept was that the resident caretaker/letting agent would perform all of these tasks. The idea that the resident/letting agent moves to a management roll, at the expense of the unit owners, was never envisaged by the original concept, and introduces a further layer into the structure.

The body corporate has a dual responsibility to rental unit owners and residential unit owners, and body corporate committees usually have at least one absentee rental owner representing the interests of rental owners. The standard of visitor accommodation constitutes a major part of the longer term memory of the visitor/tourist experience, and certainly is one of the major subjects of recommendation to friends and associates. Thus the standard of accommodation has considerable impact on new and repeat tourism business. The body corporate committee through the rental owner representative ensures that the rental agent as part of his caretaking duties performs to the required standard of presentation of the complex.

This safeguard will become increasingly important if as proposed in the Bill, rental agents are to be permitted to service more than one building, and will not be required to live within the building.

**Removing the requirement for a resident letting agent to satisfy the chief executive that they have body corporate approval and that they will live onsite to be eligible for a licence.**

This proposal in the legislation to make letting agents NOT responsible to the body corporate removes the last line of protection for rental unit owners from unscrupulous letting agents and undermines the position and authority of the body corporate. Individual letting unit owners would not have the financial resources to take a letting agent to court. Especially when the letting agent is backed by the resources of ARAMA. Personally I am becoming increasingly concerned at the conduct of the Attorney General in dealing with Body Corporate and Community Management (BCCM) matters. The Strata Community Association (SCA) and Australian Resident Accommodation Managers Association (ARAMA) appear to be receiving preferential treatment from the Attorney General compared to the Unit Owners Association Queensland (UOAQ). This is difficult to understand when the true facts of the unit industry are considered.

The first truth that must be recognised is that the owners of the units in a building collectively own the building and common property. (Not SCA or ARAMA). The unit owners purchase the developers units making the development financially viable.

The second truth is that the Unit Owners are the only financial contributors to the Queensland unit industry. Every cent that goes into the industry eventually comes from the unit owners pockets. (Not SCA or ARAMA) This fact is self evident for residential unit owners; however, investment unit owners also yield their rental returns to commissions and costs associated with letting their unit. These unit owners are the supporters of the Queensland Tourism accommodation industry. (Not SCA or ARAMA)

Undermining the position and authority of the body corporate in running and controlling their building is a long held objective of ARAMA. ARAMA has consistently and persistently used the tactic of division of the body corporate, by pitting residential unit owners against investment/letting unit owners, to achieve their aim. The insistence of ARAMA having the building office placed on title to the caretakers unit, rather than included in common property, was also a tactic to entrench caretaker control of the building that was owned by the body corporate.

The Attorney General has played into the hands of ARAMA (partially due to lack of consultation with UOAQ) by including this proposal in his Bill. A proposal that provides advantage to no one other than ARAMA.

**Consolidating and rationalising the license categories.**

Quoting His Honour District Court Judge McGill when determining Palm Springs Residences – v – Patterson at [21] “I have no idea what that provision means, if anything.” I can only guess it is whatever the Attorney General determines.

Gregory J. Carroll

**Australian Resident Accommodation  
Managers' Association**  
PO Box 2477  
Fortitude Valley BC QLD 4006  
Tel: 07 3257 3927  
Fax: 07 3257 3932  
Email: [state@arama.com.au](mailto:state@arama.com.au)  
  
[www.arama.com.au](http://www.arama.com.au)



Mr Brook Hastie  
Research Director  
Legal Affairs and Community Safety Committee  
Parliament House  
George Street  
BRISBANE

8 January 2014

Dear Mr. Hastie,

On behalf of ARAMA and our Queensland branch, the members of ARAMA wish to express support for the two bills which will affect our members, the Property Occupations Bill and the Agents Financial Administration Bill. ARAMA has been active in discussions for a significant period with the Government and officers in the Fair Trading Office and the Body Corporate and Community Management Office and the Service Delivery and Performance Commission, regarding the review of the Property Agents and Motor Dealers Act.

ARAMA has now had the opportunity to study the two Bills tabled in the Parliament in November, the explanatory notes to the legislation and have now had the opportunity to review the transcript of the Public Hearing on 12 December, 2013.

#### **Property Occupations Bill**

The initiative through the proposed legislation certainly does much to benefit the focus of the original legislation to a more direct approach in establishing an occupational licensing system for businesses and individuals operating as residential letting agents.

We applaud the administrative approach which forecast at least 20% reduction in regulations across the Queensland economy as it will not affect the service provided to owners, tenants and guests but does offer opportunities to expand the industry and attract further investment.

We have appreciated that there is recognition of initiatives in other States concerning caps and the decision in this legislation for the removing of the cap on commission paid to property agents. As has been pointed out, Queensland is currently the only Australian jurisdiction with a cap on commissions payable to property agents and this has been historically regarded as the norm.

The removal of the requirement to obtain a tick and an additional set of initials to secure the lot owners consent to the assignment of the letting agreement is a positive move which will remove an unnecessary complication in the business sales process while not reducing the lot owners rights to terminate the "Authority to Let" with notice. The removal of the assignment clause will effectively reduce red tape for all concerned, will add certainty to the business sales process and maintain the lot owner's rights. A win-win is achieved for all stakeholders.

The management rights industry was founded and pioneered in Queensland and the new initiatives in the Property Occupations Bill, ARAMA believes will lead to increased interest by Queenslanders and Australians to further invest in the Queensland property industry, in both the tourist accommodation industries and in the high density complexes which are being developed in South East Queensland and major regional centres. The

recognition that resident managers are not required to live on site is recognition of the maturity of the management rights industry and its maturity. We expect a number of resident managers will continue to live on site as that suits the operation of the property, its body corporate committee and its owners. However, the provision of commercial opportunities for resident managers to provide improved professional services in delivering effective 24/7 services with commercial benefits for owners and occupants, whether they be short term tourists or business people, or longer term tenants.

Again we welcome the advice that the Office of Fair Trading will implement and conduct information strategies to ensure that the legislation is designed to keep abreast of the opportunities for economic development and to boost investment in construction in density living complexes and in the accommodation for the Queensland tourist industry. ARAMA is willing to assist in the implementation of any information forums that the department intends to undertake and would be keen to engage with departmental officers to work through a plan that avoids date clashes with the series of ARAMA information & educational events that are already in place for members.

The Government policies to support regional events and foster and support event orientated tourism together with the new development opportunities which will flow from the National Parks Tourist strategy will be enhanced by the Property Occupations Bill.

We support the new licensing process for resident managers to apply for and be granted a licence once they have completed the licensing process and to then be able to negotiate with the body corporate committee or an existing vendor to operate a management rights business. This should provide a more straight forward arrangement than the previous requirement for licensing.

#### **Agents Financial Administration Bill**

ARAMA supports the new initiatives provided in this legislation with its provisions pertaining to Trust Accounts and also to the claim fund. We concur with the Government's desire for Queensland businesses to have legislation which is appropriately responsive to the needs of each respective industry and removes red tape.

We believe the Bill provides specific regulatory powers which not only more clearly specify industry requirements but also provide a more simplified approach which provides increased confidence for all parties. We accept that the new legislation provides sound requirements for the establishing, operation and regulation of trust accounts held by the agents regulated under the Property Occupations Bill.

We note that the Bill also sets out the framework for the establishment and operation of a claim fund to compensate persons in particular circumstances for financial loss arising from dealings with agents. Also that the Bill enunciates a number of amendments that addresses operational issues which reduces some current penalties.

Importantly we recognize that the new administrative process is to be developed for principal collection agents who wish to open a trust account. We welcome the commitment by the Government to undertake and incur costs in delivering information and education services to assist stakeholders, including existing licensees in understanding their rights and obligations following the transition from the old PAMD Act.

ARAMA appreciates the opportunity to provide further comment to the Bills that affect our members and the management rights industry. We would be available to appear before the Committee to address any issues concerning the importance of this legislative initiative if required.

Yours sincerely



Trevor Rawnsley  
CEO  
ARAMA

13 January 2013

Research Director  
Legal Affairs and Community Safety Committee  
Parliament House  
George Street  
BRISBANE QLD 4000

**By email:** [lacsc@parliament.qld.gov.au](mailto:lacsc@parliament.qld.gov.au)

Dear Sir/Madam,

## **Property Occupations Bill 2013**

I am the Chief Executive Officer of McGrath Estate Agents.

I have worked in the property industry for 30 years and established an organisation that has built a reputation for integrity, communication, customer care and results.

McGrath operates in Queensland, New South Wales and the ACT.

Last year McGrath sold 8000 properties. The predominant method of those sales was by auction and, predominately, price guides were adopted by vendors and agents to great success for those sales. Therefore, our experience in this regard is extensive.

## **Submission**

I have grave concerns regarding the proposal to ban price guides on all auction marketing.

I support the introduction of any legislation that protects consumers against undesirable practices associated with the acquisition of residential property. I also encourage legislation that achieves an appropriate balance between the need to regulate for the protection of consumers and the need to promote freedom of enterprise in the property market.

I believe banning price guides is the antithesis to what the bill aims to achieve and, in my opinion, is a draconian and regressive step which will, in the long term, harm consumers.

I oppose the banning of price guides based on the following reasons:

- 1. If the legislative proposal is adopted Queensland is the only jurisdiction on the planet that prohibits vendors advertising the price expectation would be for their property.**

The government recently declared Queensland "open for business", assuring Queenslanders that it will work hard to make the State a better place to live by facilitating major projects instead of

# McGrath

impeding them. QLD Premier, Campbell Newman, in his maiden speech, stated that politics was a service to the community and assisting people who need *“that nudge in the right direction.”*

I am of the opinion that the proposed legislation does not assist consumers. Rather, it impedes them in a property transaction.

The legislation is not in line with any other jurisdiction in the country and is contrary to what the government aimed to achieve. The banning of price guides is regressive.

## **2. The banning of price guides is inconsistent with freedom of speech.**

The legislation will prevent vendors advertising their property with a price guide. It will also impose a \$49,000 fine on agents who do advertise with price guides.

I am of the opinion that any control or impediment upon on the use of price guides is dictatorial and inconsistent with freedom of speech.

## **3. The banning of price guides eliminates consumers’ access to information.**

The vast majority of consumers in the real estate market are dual income consumers with families. These consumers are time poor and have limited time to research properties. The banning of price guides removes information most relevant to consumers. The proposed legislation takes away the number one search criteria that consumers utilise when purchasing property - price.

There may be a belief that suggests that the banning of price guides will reduce the number of complaints received in relation to misquoting as it eliminates information available to consumers.

If this were the case, it would surely be the greatest example on record of throwing the baby out with the bath water.

The lack of price guides is detrimental to consumers. It disempowers a vendor and prevents the highest and best use of all available information by a vendor. A prospective buyer would not know how much he or she will be required to pay to buy a property. Imagine for a moment walking through a corner store that did not display any prices. You would walk out of the store and find one that did.

## **4. The banning of price guides would render marketing of properties online virtually useless.**

Current research shows that 92% of consumers utilise the internet to search for properties. 54% of consumers pass over advertisements that do not provide a price guide. Therefore, should the legislation be passed, advertising on the internet would be an ineffective means of marketing property and will also make the process of purchasing property difficult and time consuming.

The proposed legislation will also be detrimental to vendors aiming to market their properties online as the majority of prospective purchasers will pass over a property that does not have a price guide.

## **5. There is currently confusion over the use of price guides and the practice of misquoting.**

In my opinion, it would seem that those who support the abolition of price guides are those who engage in the practice of misquoting, themselves. What better way to ensure transparency,

# McGrath

integrity and compliance than to insist upon the use of price guides. If anything, in an attempt to stop the practice of misquoting, I would be moving towards mandating the use of price guides rather than forbidding the use of price guides.

I am as passionate as the Office of Fair Trading in relation to stamping out misleading price quotes. This is also to my advantage as it would reduce the industry by 25%. However, banning price guides will do nothing to assist in this regard, it will however make it easier for people to get away with the practice of misquoting.

I have serious concerns regarding the banning of price guides and cannot support the Bill as it currently stands. Legislation that promotes freedom of choice and consumer protection is necessary and the banning of price guides does not encourage the necessary transparency required to protect consumers in the acquisition and sale of property.

I wish to appear before the Committee at the public hearing on 6 February 2014 to elaborate on my submission. Please find my contact details below:

John McGrath  
Chief Executive Officer  
McGrath Estate Agents  
191 New South Head Road  
EDGECLIFF NSW 2027

Phone: 02 9386 3339  
Email: [johnmcgrath@mcgrath.com.au](mailto:johnmcgrath@mcgrath.com.au)

Yours faithfully,  
McGrath Estate Agents



**John McGrath**  
**Chief Executive Officer**



14 January 2014

Research Director  
Legal Affairs and Community Safety Committee  
Parliament House  
George Street  
Brisbane Qld 4000

[lacsc@parliament.qld.gov.au](mailto:lacsc@parliament.qld.gov.au)

Dear Sir / Madam

### **SUBMISSION REGARDING THE PROPERTY OCCUPATIONS BILL 2013**

This Submission relates specifically to **Assignment of Appointments – Section 113 (2)**

It is our opinion and view that Section 113 (2) of the Property Occupations Bill 2013 should be reviewed for the following reason and explanation:

Section 113 (2) specifies that the assignee is only required to give the Client a notice of the assignment within 14 days **AFTER** the assignment. This provision is not considered to be in the best interests of the Consumer or the Agents involved in the Assignment of the Appointment.

#### **EXPECTED IMPACT OF THE PROPOSED LEGISLATION**

Section 133 (2) - This clause will mean that the Client will be left in the dark without knowledge of the change in their Agent until **AFTER** the assignment of the Appointment has occurred when the assignee has given the Client notice.

This will result in conflict and disputes between the Client / Consumer and the Agents involved. An example follows.

Example 1: Without the Client's knowledge, the assignment of the Appointment occurs on 1 May. Before the Client receives the assignee's written notice of the assignment, on 3 May, the Client calls their original Agent about a matter related to their property. The Client is surprised and very annoyed to hear that that Agent no longer manages their property, has not been advised before the assignment and that the other Agent which now manages the property is not an Agent they would ever have agreed to manage their property. The Client is angry that there has been no consultation or advice about the proposed change by the original Agent BEFORE the assignment occurred.

Example 2: Without the Client's knowledge, the assignment of the Appointment occurs on 1 May. Before the Client receives the assignee's written notice of the assignment, on 3 May, the Client calls or visits their original Agent about a matter related to their property. The Client is shocked to find that the Agent's phone is disconnected and the Agent's office premises are now vacant. The Client has no way of knowing what has happened to their property, tenant, rent monies, file records, and where to locate the Agent who they appointed to manage their property. What do they do? Most likely the only option available to the Client is to call the Office of Fair Trading to lodge a complaint about the Agent.

In both of the above examples, the Client will also be upset that they have wasted their money in phone calls and their time only to discover an assignment of the original Appointment has occurred without any prior advice being given to them and that their personal details including bank account information, contact details and rental monies held in trust have been handed over to an unknown Company without their express consent to do so first.

The Client may terminate the Appointment of the assignment but only after it has been assigned. This will cause aggravation by not only the Client, but also the assignee that has paid a fair price to the original Agent for the assigned Appointment on 1 May.

Even if the Client does receive a Notice from the assignee within 14 days after the assignment, they will be confused and upset to find the Notice is given by an Agent they have had no prior relationship with. The Client will expect that the advice of the proposed assignment would be given by the original Agent appointed.

Without a review of Section 133 (2) to take into account this Submission, it will most likely result in the following:

- Significantly high numbers of very unhappy Consumers who will be upset and confused by the lack of courtesy and communication from their original Agent before an assignment occurs.
- An increased number of complaints by Consumers to the Office of Fair Trading would likely occur.
- The Agent assigning the Appointments will also be affected and set to lose a lot of money in the transfer of their Rent Roll to the assignee as the upset Clients terminate the assigned Appointment.
- In turn the assignee will lose a lot of business which they have just paid for the assigned Appointments.
- A flow on effect will occur if additional staff has been employed by the assignee to manage the assigned Appointments. If the Clients terminate the assigned Appointment, the new staff will not be required and be terminated. This will cause duress and expense to all parties to the employment.

To summarise, in practice, the proposed Section 133 (2) does not work and is not in the best interests of any party involved in the assignment process.

## ALTERNATIVE LEGISLATION RECOMMENDATION

In consideration of the dilemmas caused by the proposed S 113 (2) as outlined above, it is recommended that this section be reviewed and changed to reflect the following:

- The Agent who holds the original Appointment under section 102 must give each Client 14 days written notice of the proposed assignment **prior** to the assignment.
- The Client may revoke the assignment by giving notice in writing to the Agent **prior** to the proposed assignment. If the Client Agent does not give notice to revoke the assignment **prior** to the advised proposed assignment, the Appointment may be assigned.

Such consideration in the Legislation will help to ensure transparency for the Consumer and Agents thus reducing risk to all parties involved in this process.

## SUBMISSION QUALIFICATION

- This Submission is based on the past 10 years of experience as a leading and REIQ Award winning Real Estate Agency Broker which specialises in the sale of Rent Rolls in Queensland.
- Real Estate Dynamics is involved in approximately 70% to 80% of the Rent Roll Sales in Queensland and have transacted hundreds of Rent Rolls to date. Based on our high level of involvement with the assignments and transferring of Appointments, I believe we are qualified to express the views as outlined in this Submission.
- Please refer to the attached Profile for your reference.

Other background information and issues also relevant to this Submission follow:

- On the sale of a Rent Roll there are three parties involved: the Agent who is selling their Rent Roll business, the Agent who is buying the Rent Roll business and the Client who has appointed the original Agent to manage their property. Transparency between the parties is important to all.
- At the time of appointing an Agent to manage their Property the Client will have researched and selected the Agent of their choice to manage their Property effectively. So when their current Agent sends an letter to them telling them that they are exercising the right under the Assignment of Appointment clause, which is the box they ticked on the Appointment form years ago and this other Agent that they have just sold to will be their new Managing Agent, some Clients become annoyed and will not transfer over to the new Agent.
- When selling a Rent Roll, Real Estate Dynamics always advise the selling Agent to send out a new Appointment form for the Client to sign or a letter for the Client to sign their agreement to the Assignment of the current Appointment and return the advice to the selling Agent before the change in Agents occurs. The selling Agent sends to the Client an introduction letter from the new Agent with information about the new Agent and the services they will provide and confirm that the Appointment is on the same terms. This is important information that the consumer needs before the change of Agents occur.
- After receiving the notice from their Agent, the Client usually understands the reason for the change of Agent and the process involved and signs the new Appointment form or agrees to the assignment of the Appointment and returns it to their Agent before the date when the change of Agent will occur.
- About 97% of Agent's Appointment forms that our company sees are considered to be not compliant. This is due to the current complexity of requirements for its completion to comply with Legislation and the fact that many Agents complete the Appointment form incorrectly. This will be easier once the proposed Bill simplifies the requirements for the proposed new Appointment forms. However for all existing Appointment forms, it is not possible to assign those that are non-compliant. In this case a new Appointment form that is compliant is the only option.
- Financial Institutions which lend on Rent Rolls will rarely fund a Rent Roll which is based on assignment of the Appointment. They are requiring the selling Agent to obtain a new Appointment form specifying the buying Agent and their\_Company details and for the new Appointment form to be signed by the Client.
- There is a very poor success rate of Rent Rolls being transferred between Agents by way of assignment with some cases resulting in up to 50% of the selling Agent's Rent Roll lost during the transaction simply due to the lack of consultation and communication by the selling Agent with the Client in regards to the proposed assignment **BEFORE** the assignment occurs.

I recommend that the Legal Affairs and Community Safety Committee review Section 133 (2) taking into consideration the issues and points outlined in this Submission.

If you would like to discuss any aspect of this Submission, I would be delighted to assist. My contact details:

PHONE 07 37209344 or 0419 731390  
EMAIL [paulbrooks@realestatedynamics.com.au](mailto:paulbrooks@realestatedynamics.com.au)  
ADDRESS Suite 33, 17 Bowen Bridge Rd  
Herston 4006

Yours faithfully  
**REAL ESTATE DYNAMICS**



**PAUL BROOKS**  
Director

Enc



# NQ Building & Pest Reports

78 Pease Street, Cairns 4870  
Ph: 07 40532233 Fax: 07 40535311

ABN:32106288546

Property Occupation Bill 2013  
Submission 008

20<sup>th</sup> December, 2013

Mr Ian Berry MP, Member for Ipswich  
Chairperson  
Legal Affairs and Community Safety Committee  
Parliament House  
George Street  
BRISBANE QLD 4000

Via email: [lacsc@parliament.qld.gov.au](mailto:lacsc@parliament.qld.gov.au)

I would like to make a submission in relation to the proposed Introduction of the new Property Agents Act. I understand the Government's position on the removal of red tape, but in doing so, the interests of the consumer must remain a priority.

Over a period of twelve years carrying out pre-purchase building and pest inspections I have continually witnessed selling Real Estate agents pushing forward their preferred Building Inspector to carry out pre-purchase inspections and directing them away from Independent Inspectors such as myself who have no obligation or connection to the agent.

From my observations and discussions with agents there are a few reasons these inspectors are being handed out work:

- Sales are assured and the agent receives his commission from the vendor.
- The inspector releases his findings to the agent without any consideration for his client's rights under the Privacy Act.
- The inspector offers inducements or pays commissions to agents in return for referrals
- Substandard reports are carried out often by inspectors new to the industry who find marketing agents in return for referrals an easy way to get established
- The agent refers to thorough inspectors as alarmist who compromise successful completion of sales.

In my opinion the purchaser's right to a thorough independent pre-purchase inspection is being compromised. When I point this obvious conflict of interest out to purchasers they generally immediately understand that their rights to fair treatment could have been breached and have expressed concern as to how this is allowed to occur.

---

*Independent Pre-purchase Specialists*

In my opinion, there is a vital necessity to place the same degree of importance on the relationship between Real Estate Agents involved in property sale, and Pest/Building Inspectors entrusted with pre-purchase inspections, as exists with Solicitors/Conveyancers, Valuers and Lenders, all of whom provide vital information that can influence the decision making of the consumer.

It is critical that home buyers have confidence in the professionals that they engage to protect their interests that in most cases is the largest single investment of their lifetime.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'G. Kite', with a stylized flourish extending from the end.

Greg Kite

16 January 2014

Research Director  
Legal Affairs and Community Safety Committee  
Parliament House  
George Street  
Brisbane QLD 4000

By Email: lacsc@parliament.qld.gov.au

Dear Sir Madam

RE: PROPERTY OCCUPATIONS BILL 2013 (CLAUSES 7 & 8)

QIC Limited ("**QIC**") is a government owned corporation constituted under the *Queensland Investment Corporation Act 1991* (Qld). QIC was established by the Queensland Government in 1991 to serve its long-term investment responsibilities. QIC currently delivers services to over 90 institutional investors and has \$70.3 billion<sup>1</sup> in funds under management.

QIC Global Real Estate ("**QIC GRE**") is a business division of QIC. QIC GRE has approximately \$11 billion<sup>2</sup> invested in its Australian and international retail and office real estate portfolio. The portfolio includes four core shopping centres and additional peripheral retail centres in Queensland.

Due to contractual intra-group arrangements within QIC GRE, QIC Properties Pty Ltd ("**QICP**") is required to hold a corporate real estate agent's licence under the *Property Agents and Motor Dealers Act 2000* (Qld) and equivalent licences in the other States and Territories in which it operates. QICP is only required to hold such licences because of the property management and leasing services that it provides on behalf of group companies and in limited circumstances, co-owners of its properties.

There are also approximately 30 individuals employed by or on behalf of QICP that either hold a real estate agent's licence or are registered as salespeople under the *Property Agents and Motor Dealers Act 2000* (Qld) ranging from Directors to the staff employed in the centre management offices of QIC's shopping centres.

It is estimated that QICP spends more than \$300,000 annually on compliance with *Property Agents and Motor Dealers Act 2000* (Qld) and its equivalent legislation in other States and territories. The figure takes account of licence fees, registration fees, training courses fee and legal and administrative costs. However, this estimate does not factor in less tangible costs such as the cost of compliance with statutory trust accounting requirements or the potential opportunity costs of leasing executives and senior managers committing significant time to attending training courses.

---

<sup>1</sup> As at 30 September 2013.

<sup>2</sup> As at 30 September 2013.

In view of the above, QIC GRE wishes to express its strong support for Clauses 7 and 8 of the *Property Occupations Bill 2013* (Qld). As a member of the Shopping Centre Council of Australia (“SCCA”), QIC has had the opportunity to read the SCCA’s submissions dated 17 December 2013 and supports these submissions.

Please feel free to contact Katrina Swift on +61 7 3020 7140 or via email at [k.swift@qic.com](mailto:k.swift@qic.com) if you require any additional information.

Yours sincerely



Campbell Holmes a Court

**Director – Retail Property Operations**

QIC GRE

15<sup>th</sup> January 2014



The Research Director  
Legal Affairs and Community Safety Committee  
Parliament House  
George Street  
BRISBANE QLD 4000

Sent via email [lacsc@parliament.qld.gov.au](mailto:lacsc@parliament.qld.gov.au)

Dear Sir/Madam

I write this submission as Company Director of Real Estate Excellence and on behalf of my 230 Real Estate Excellence member offices in Queensland.

I have been an industry educator and advisor for over 13 years with prior experience in agency practice.

It is with great concern that the Government have proposed the banning of price guides in clauses 214 and 216 of the Property Occupations Bill.

The concern is for many reasons which include the following;

- The banning of price guides greatly disadvantages both parties in the real estate transaction; buyer and seller.
- The buyer is greatly disadvantaged as they are in a position of possible expense and frustration without knowing a price expectation for an auction property.
- The frustration felt by buyers is commonly targeted at the real estate industry as they feel there is no transparency. This by default may lead to complaints being made against agents in error.

- The seller as a consumer should have the right as to whether they choose to have price guides exposed to the market place. Given that it is there property they should have freedom of choice as to how they want their property marketed to the marketplace
- The debate that the banning of price guides will alleviate the allegations of agents under quoting is defunct given that there are provisions in legislation for agents conduct and obligation in relation to misrepresentation.
- If it is found that agents are in fact misrepresenting through under quoting, then of course appropriate action and enforcement from the Office of Fair Trading should be undertaken

It is believed that total banning of price guides goes against the grain of consumer protection; in fact it appears to have the expected result of the complete opposite. Transparency in real estate is paramount as is consumer protection. It is not understood what the actual intent of such as proposed change of legislation such of this is and who is fact is being protected?

Consumers such as buyers should have the right to access information if the seller of the property allows. It is strongly recommended that this provision be removed and the decision of disclosure be with the seller of the property as ultimately they are consumers that should have the choice in relation to disclosure of the price guide for auction property; not the Government taking away their freedom of choice.

Yours sincerely

Stacey Holt

Sole Director

Real Estate Excellence Academy Pty Ltd

[www.realestateexcellence.com.au](http://www.realestateexcellence.com.au)

07 3161 1865

PO Box 154

Alderley QLD 4051

[Stacey.holt@realestateexcellence.com.au](mailto:Stacey.holt@realestateexcellence.com.au)



# Submission for Consideration

by Alan Liddle (for ADL Software)  
(on behalf of the Real Estate Industry of Qld)

## Review of the *Property Occupations Bill 2013*

16<sup>th</sup> January 2014

Research Director  
Legal Affairs and Community Safety Committee  
Parliament House  
George Street  
Brisbane Qld 4000

Dear Sirs/Madams,

Further to your letter dated 28<sup>th</sup> November 2013, calling for submissions in respect to the following Bills:

- Property Occupations Bill 2013
- Motor Dealers and Chattel Auctioneers Bill 2013
- Debt Collectors (Field Agents and Collection Agents) Bill 2013
- Agents Financial Administration Bill 2013
- Fair Trading Inspectors Bill 2013

I wish to make submission, on behalf of the real estate industry of Qld, in respect to the Property Occupations Bill 2013.

### **Background**

ADL Software provides legal forms services to the Real Estate industry in Australia, with in excess of 1,700 client real estate offices in Qld alone.

As part of our services to the industry we provide news and articles on legislation, court rulings and precedence that affect the industry and also lobby relevant government bodies on the industry's behalf to affect changes to improve the overall status of the industry.

Given our industry services, we have not only become highly respected as legal forms providers to the industry, but also an instrument of industry opinion, information provision and influence.

In a great many cases, clients will approach our organisation as a de facto industry representative association.

As a result we have a number of issues that we are able to bring to the attention of the review committee. These issues are, we believe, reflective of the feelings of the majority of real estate agents throughout Qld who all believe that addressing these issues will resolve many day-to-day problems for the industry without diminishing consumer protection.

## **Issues for Consideration**

(Not necessarily in order of importance)

### **1. Approved Forms**

s104 of the Bill (General content of appointment) outlines what statements MUST be included in an Agency Appointment. It also specifies that they must be included in the 'approved form'. s103(2)(a) also outlines the requirement to give a notice to the client, *'in the approved form, that provides information about sole and exclusive agency appointments'*. I assume that this notice will also form part of the Agency Appointment.

Under current legislation agency appointments are 'approved' forms. The purpose of these forms in general is not a matter of contention. Unfortunately the design of these forms can cause issues with their everyday practical usage leading to possible unintentional incorrect completion.

The problems that are associated with the current forms are as follows:

- a. **Clients' Name** - The Client's name must be entered as 'First Name' and 'Last Name':

<b>Part 1—Client details</b>	
Please provide details of the client name and their full address.	First names <input type="text"/>
	Last name <input type="text"/>
	Company name (if applicable) <input type="text"/>

Apart from servicing no apparent purpose this can lead to unintentional error on behalf of the real estate agent or client. Consider the following:

- i. Many properties are owned by more than one person and, in some cases, as many as four or five.
- ii. By having two fields the amount of room available to enter clients' names is greatly reduced.
- iii. Forms services like ADLForms and Realworks (REIQ) allow merging of data from CMS databases, which generally store client names in a single data field.

Both ADL and the REIQ have had to published versions of 'approved' agency authorities that do NOT have two fields (ie. 'First Name' & 'Last name') but have only one field titled 'Name'. Refer Clients' Name Fields in the ADL version of Part1 – Client Details below:

<b>Part 1—Client details</b>	
Please provide details of the client name and their full address.	Name <input type="text"/>
	Company name (if applicable) <input type="text"/>

b. **License Expiry Date** - The agent's License Expiry Date field is a Boxed field:

Licence number ..... Licence expiry   /   /      
D D M M Y Y Y Y

This is an issue in that it is a requirement that both the Real Estate Agent's License Number and Expiry Date associated with ALL agents named on the appointment MUST appear on the appointment.

Multiple license numbers are required on forms when:

- i. A real estate office is owned by more than one registered real estate agent
- ii. An appointment is made in conjunction with another agency

Both ADL & the REIQ currently publish versions of the 'approved form' where the 'Licence expiry' field is NOT boxed and can accept multiple dates. Refer example done on an ADL appointment below:

Licence number **654321 & 123456** ..... Licence expiry **31/12/2015 & 31/12/2014** .....

c. **BLOCK Letters** - It is a requirement to complete forms in BLOCK Letters:

### Instructions

Please complete in **BLOCK** letters. Attach extra pages if needed. All references completing this form, please contact the Office of Fair Trading on 13 13 04.

While this requirement is preferable when completed by hand to ensure legibility, it is not practical when completed by electronic forms software such as ADLForms or RealWorks (REIQ).

When this requirement first appeared on Qld Approved Agency Appointments, we forced agents to enter all details in Capital Block when using ADLForms. Feedback was immediate and consistent. Agents wanted the ability to enter details in Upper/Lowercase print, citing that with electronically printed forms, details are actually more readable when NOT in BLOCK Letters. Also, it was pointed out that more information could be entered into a field when typed in Upper/Lowercase.

Needless to say, we had to bow to our client's wishes and allow them to enter details in the format that suited them best.

A number of clients actually use a mix of Uppercase and Upper/Lowercase to clearly indicate the clients' names. Take for example the situation where the following people own the property:

- Peter Michael
- Mary Schubert

If their names are simply entered as PETER MICHAEL & MARY SCHUBERT, it might be incorrectly assumed that the clients' names are:

- Peter Michael Schubert; and
- Mary Schubert

To make positively clear who the clients are, the smarter agents will enter their names as Peter MICHAEL & Mary SCHUBERT.

If Peter's surname really was SCHUBERT then the clients' name would be entered as Peter Michael & Mary SCHUBERT.

In Summary forcing the use of BLOCK Letters on a form has the following issues:

- i. Information is harder to read
  - ii. Less information can be entered into form fields
  - iii. Client names can be inadvertently misread.
- d. **Commission** - On the PAMD Form 20a (Appointment of agent—Letting and property management) there is only room for one Commission when it is common practice to charge two separate forms of commission, each calculated differently:

The client and the agent agree that the commission payable for the service to be performed by the agent is:

You must express the commission in both formats	
Dollar amount	Percentage
Total commission \$ .....	..... %
GST \$ .....	..... %
Total payment \$ .....	.....
<b>To the client:</b> For collection of rent –	

The two forms of commission are:

- Letting Commission (Charged each time a new tenant is secured for the premises - Generally 100% of one week's rent)
- Rent Collection Commission (Charged on a monthly basis as a percentage of rent collected on behalf of the client – Generally between 7% and 12%)

To accommodate the dual commissions on a PAMD Form 20a, ADLForms defaults a reference to an attached schedule in the approved commission fields as follows:

The client and the agent agree that the commission payable for the service to be performed by the agent is:

You must express the commission in both formats	
Dollar amount	Percentage
Total commission \$ <b>REFER TO ITEM SCHEDULE ITEM B</b> .....	..... %
GST \$ <b>REFER TO ITEM SCHEDULE ITEM B</b> .....	..... %
Total payment \$ <b>REFER TO ITEM SCHEDULE ITEM B</b> .....	.....
<b>To the client:</b> For collection of rent –	

The relevant fields in the attached Item Schedule Item B (referred to above) look like:

B. COMMISSION (Payable in accordance with PAMD Form 20a Part (5))		Clauses 2.2, 4(1), 4(2), 5 & 6
<b>YOU MUST EXPRESS THE COMMISSION IN BOTH FORMATS</b>		
<b>Rent Collection:</b>	<i>(Refer to Property Agents and Motor Dealers Regulation 2001, Schedule 1A, Sections 3(1)(a) and 3(1)(b))</i>	
	<b>DOLLAR AMOUNT</b>	<b>PERCENTAGE</b>
COMMISSION:	-----	-----
GST:	-----	-----
TOTAL PAYABLE:	-----	-----
COMMENTS:		
<b>Letting:</b>	<i>(Refer to Property Agents and Motor Dealers Regulation 2001, Schedule 1A, Sections 2(1)(a) and 2(1)(b))</i>	
COMMISSION:	-----	-----
GST:	-----	-----
TOTAL PAYABLE:	-----	-----
COMMENTS:		

This solution provides, we believe, the best possible way to allow an agent to declare two commissions within the requirements of the law.

- e. **Insufficient Room** – On the current approved Agency Appointments there is insufficient room to fully outline the responsibilities of both the Agent and the Client. The approved forms tend to deal only with required legislative content and in themselves are generally not suitable or adequate to be used as complete contractual agreements between parties.

The ‘approved form’ of appointment should only form part of an overall agreement that incorporates a more comprehensive schedule of items, terms and conditions (for example the standard ADL version of the PAMD 20a [Appointment of agent—Letting and property management] has an additional 8 pages of items, terms and conditions – refer attached sample).

Whilst the approved form allows for the attachment of a schedule, where a schedule is attached, proper referencing between the approved portion of the form and the attached schedule must be accurate and consistent. The slightest error in this process may invalidate the appointment and result in the loss of commission by the agent.

This has been more than apparent when completing the item ‘Performance of Service’ in the approved form (Item 4.1 of the PAMD 20a).

Where insufficient or incorrect reference to the attached schedule has been made in this item (or no reference made at all) the courts have deemed the appointment to be invalid, even though it is quite apparent the attached schedule forms part of the appointment.

Contrary to statements made in recent media releases, the requirement to state how the service is to be performed on the approved form may still be a requirement under the proposed legislation. Refer s104(1)(c)(i) which states:

- (1) An appointment of a property agent or resident letting agent must include the following in the approved form—
  - (c) for each service, provision for the inclusion of a statement about the following—
    - (i) the service to be performed by the property agent or resident letting agent

To help alleviate the issues associated with insufficient room on approved forms of appointment:

- i. ADL provides default pro forma wording in relevant fields for referencing attached schedules, which is correct wording. However agents will often not use our default wording, resulting in problems as outlined above.
- ii. ADL appointments have an overall page numbering system that incorporates both the approved form and the attached schedule.

#### **Conclusion – Approved Forms** (including sub items a. thru e.)

As outlined above it is obvious the use of ‘approved’ appointments can cause serious issues with the appointments. Not only does the necessity to attach further information to the appointments pose its own issues, but the good intentions of government forms designers can inadvertently cause real-life forms completion issues that can create confusion and lead to technically incomplete appointments.

Approved forms definitely have their place in the scheme of things, especially when it comes to disclosure and forms of notice. Experience shows there needs to be a more user friendly way to ensure agents comply with legislative requirements in respect to appointments.

#### **Recommendation – Approved Forms**

We recommend the components of an agency appointment, currently required by legislation to be in the ‘approved form’, be able to be incorporated into a document format published by industry form providers, such that such form is approved as long as the current “‘approved form’ components” are included.

The proposed legislation s104 need not be reworded, but s234 could be amended to read as follows:

“The chief executive may approve forms **or components of forms** for use under this Act.”

This approach has been adopted in other States with a great deal of success.

For example, Victoria has a number of requirements for their agency appointments, some of which are designed and published at <http://www.consumer.vic.gov.au/resources-and-education/forms-and-publications>. In Victorian legislation the wording ‘a statement in a form approved by the Director’ is used where wording is to be included in respect to a particular Section of the Act (eg. refer Estate Agents Act 1980 s49A(1)(c)(iv)).

The attached sample ADL Vic Exclusive Selling Agency Authority shows in items 5 (Agent’s Estimate of Selling Price), 12 (Making a Complaint) & 14 (Rebate Statement) where information has been inserted into the Authority in a form approved by the Director.

Following this approach for agency appointments will have the following benefits:

- a. All legislation requirements (including warnings) will be incorporated into the appointment providing maximum protection to the consumer.
- b. Agency Appointments will be easier to follow and complete, without risk of technical infringement.
- c. Agents will be able to use electronic merging facilities to ensure consistency of data.
- d. Where precedents require or industry standard practices change, industry forms providers can produce and publish updated forms in a fraction of the time that can be accommodated by Government processes. Where an ‘approved form’ component requires change, much less effort is required by the Government.

## 2. Day Appointment Ends

s108(2)(b) requires that the appointment states the 'day the appointment ends'.

Given that s103 states that the client may negotiate a term up to 90 days, does this mean the term must also be stated to prove that a term was negotiated? If so, agents will often calculate the wrong end date and unwittingly invalidate the appointment. It needs to be clearer with less room for error.

### Recommendation – Day Appointment Ends

Have this section allow for either:

- a. Date of Agreement (the Start) and Term of Agreement; OR
- b. Date of Agreement (the Start) and Day Agreement Ends

## 3. Copy of Signed Appointment

s109 requires that a copy of the signed appointment be must be given to the client.

There are a few points of concern in respect to this requirement:

- i. There is no time frame specified to indicate how long may lapse between all parties signing and the copy being provided to the client.
- ii. Is the appointment effective only when the 'copy' is given to the client? If so, the Date of Agreement would be the date the copy is given to the client.
- iii. With the advancements in technology, we at ADL are currently investigating the use of digital signatures in respect to real estate transactions. When using digital signature technology, it is my understanding that, a fully signed agreement in the currently accepted sense, does not necessarily ever exist. As such the 'completed agreement' is 'made available' to the parties electronically once all parties have 'signed' the agreement.

### Recommendation - Copy of Signed Appointment

- a. Ensure that legislation is clear on when an agreement starts.
- b. Ensure that legislation allows for digital signatures (They are coming – industry pressure is overwhelming)

## Summary

Generally the proposed legislation appears to have covered most of the suggestions not already addressed in previous submissions by ADL Software. With the above issues addressed I believe the proposed legislation will stand a far greater test of time than previous attempts at reform.

We thank you for the opportunity to make submission in respect of the proposed Bills.

Yours Sincerely



Alan D Liddle  
(Director)



## Part 4—Appointment of agent

	<p>The client appoints the agent to perform the following service/s:</p> <p><input type="checkbox"/> Letting/leasing of property                      <input type="checkbox"/> Collection of rent</p> <p><input type="checkbox"/> Other property management service/s (please specify) .....</p> <p>(if insufficient space, please attach schedule)</p>
<p><b>4.1 Performance of service</b></p>	<p><b>To the agent:</b> State how you will perform the service/s AND any conditions, limitations or restrictions on the performance of the service/s. (e.g. whether and how often the agent conducts property inspections, whether and to what limit the agent is authorised to supervise and carry out repairs and maintenance on property.)</p> <p><b>PROPERTY TO BE LEASED &amp; OR MANAGED &amp; SERVICES TO BE PERFORMED IN ACCORDANCE WITH THE ITEM SCHEDULE &amp; TERMS OF APPOINTMENT FORMING PART OF THIS PAMD FORM 20a</b></p> <p>(if space is insufficient, please attach additional sheet/s)</p>
<p><b>4.2 Type of appointment</b> Tick whichever appointment type applies.</p>	<p>The appointment is a:    <input type="checkbox"/> Single appointment    <input type="checkbox"/> Continuing appointment (for a particular service).                      (for a number of services over a period).</p> <p>End of continuing appointment: .....</p> <p><b>To the client:</b> If the appointment is a continuing appointment, you may revoke the appointment by giving 90 days notice in writing to the agent, unless you and the agent agree to a shorter notice period (but it must not be less than 30 days).</p>
<p><b>4.3 Listed rental charge</b></p>	<p>Listed rental charge: .....</p>
<p><b>4.4 Assignment clause</b> Tick whether you agree or disagree with the assignment. In the absence of a tick and initials, it is taken that the client <b>does not</b> agree to this assignment clause.</p>	<p><b>Real estate agent:</b> The client agrees that the agent may, at any stage throughout the appointment, assign the appointment to another real estate agent without changing the terms of the appointment.</p> <p><b>Resident letting agent:</b> The agent may assign its interest in this appointment to any person or entity which is, or will be, with the approval of the body corporate for the complex in which the property is situated, the letting agent for the complex.</p> <p><input type="checkbox"/> I agree with the assignment clause.                      <input type="checkbox"/> I disagree with the assignment clause.</p> <p>Client to initial: .....</p> <p><b>Note:</b> The client will receive notice of the assignment, including the name and business address of the agent being assigned the appointment.</p>

## Part 5—Commission

	<p><b>To the client:</b> The <i>Property Agents and Motor Dealers Regulation 2001</i> sets a maximum amount of commission chargeable by your agent for the letting and collection of rent on residential property.</p> <p><b>Please note you have a right to negotiate an amount lower than this amount of commission.</b></p>
--	--

**Part 5—Commission continued**

**5.1 Agreed commission**  
Please note that you (the client) will have to pay Goods and Services Tax (GST) on any commission chargeable under this appointment.

The client and the agent agree that the commission payable for the service to be performed by the agent is:

**You must express the commission in both formats**

Dollar amount	Percentage
Total commission \$ REFER TO ITEM SCHEDULE ITEM B .....	..... %
GST \$ REFER TO ITEM SCHEDULE ITEM B .....	..... %
Total payment \$ REFER TO ITEM SCHEDULE ITEM B .....	.....

**To the client:** For collection of rent –

- **Percentage:** Commission expressed as a percentage is worked out only on the amount of rent or leasing fee actually collected.
- **Amount:** Commission expressed as an amount represents the commission payable if the property is rented at the listed rental charge (see section 4.3 above). If the actual rent charge, or the amount collected in any rental period, is higher or lower than the listed rent charge, the amount of commission payable may vary from the amount stated.

**5.2 When payable**  
Agent to specify when commission is payable.

.....  
.....

Date   /   /      
D D / M M / Y Y Y Y

**Part 6—Fees and charges**

**6.1 Amounts payable**  
The fees and charges payable by the client for the service are (e.g. bank charges, fee for arranging and supervising repairs and replacements).

Please note that fees and charges chargeable under this appointment are inclusive of Goods and Services Tax (GST).

**REFER TO ITEM SCHEDULE ITEM D**

**6.2 When payable**  
Agent to specify when fees and charges are payable.

.....  
.....

**6.3 The maximum value**

The maximum value of repairs and maintenance to be paid by the agent without prior approval by the client is: \$ .....

**Part 7—Expenses**

**7.1 Authorisation to incur expenses**  
**Note:** Only the actual amount of any expense can be retained or recovered by the agent, if expenses are authorised.

The client authorises the agent to incur the following expenses in relation to the performance of the service/s: (Agent to complete in relation to each service or category of service.)

7.1.1 **Advertising/marketing** (if any):  
.....

Authorised amount \$: .....

7.1.2 **Other** (e.g. photocopying, telephone calls, facsimile transmissions, postage, etc):  
.....  
.....

**Part 7—Expenses continued**

**7.2 Agent's rebate, discount, commission or benefit**

**To the agent:** State the source and the estimated amount or value or any rebate, discount, commission or benefit that you may receive in relation to any expenses that you may incur in connection with the performance of the service:

Source	Estimated amount (\$)	Value (%)
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....

**Part 8—Signatures**

**Client 1**

**Please note:** If more than two clients, please photo copy this page when blank and attach when complete.

**To the client:** If you want more information before you sign this form, visit the Office of Fair Trading's website at [www.fairtrading.qld.gov.au](http://www.fairtrading.qld.gov.au) or call 13 13 04. All parties are to sign and keep a copy of this appointment.

Signature .....

Signatory (print name) .....

Date signed   /   /

D D M M Y Y Y Y

**Client 2**

Signature .....

Signatory (print name) .....

Date signed   /   /

D D M M Y Y Y Y

**Agent**

Signature .....

Signatory (print name) .....

Date signed   /   /

D D M M Y Y Y Y

When performing this service, the agent must comply with the code of conduct for real estate agents or resident letting agents as set out in the *Property Agents and Motor Dealers (Real Estate Agency Practice Code of Conduct) Regulation 2001* or *Resident Letting Agency Practice Code of Conduct*.

**SCHEDULES OR ATTACHMENTS  
(if applicable)**

**Item Schedule**

**(In conjunction with PAMD Form 20a)**

**Item**

**A. AVAILABILITY DATE**

\_\_\_\_ / \_\_\_\_ / \_\_\_\_

**B. COMMISSION** (Payable in accordance with PAMD Form 20a Part (5))

Clauses 2.2, 4(1), 4(2), 5 & 6

**YOU MUST EXPRESS THE COMMISSION IN BOTH FORMATS**

Rent Collection: (Refer to Property Agents and Motor Dealers Regulation 2001, Schedule 1A, Sections 3(1)(a) and 3(1)(b))

**DOLLAR AMOUNT**

**PERCENTAGE**

COMMISSION: .....

GST: .....

TOTAL PAYABLE: .....

COMMENTS: .....

Letting: (Refer to Property Agents and Motor Dealers Regulation 2001, Schedule 1A, Sections 2(1)(a) and 2(1)(b))

COMMISSION: .....

GST: .....

TOTAL PAYABLE: .....

COMMENTS: .....

**C. RENT & STATEMENTS**

Clause 10.12

Rent Payment Period: .....

Payable to:  Client  Bank/Building Society  Other (please tick only one)

Bank: ..... Branch: ..... BSB: .....

Account Name: ..... Account No.: .....

If Other: Name: .....

Address: .....

Statements Issue Period: .....

Sent to:  Client

Other Name: .....

Address: .....

Phone: .....

Fax: .....

**D. FEES & CHARGES**

Clauses 2.2, 4(1), 4(2), 6 & 21(6)

\*A fee may be expressed as either: (a) Fee + GST Amount = GST inclusive Fee OR (b) single GST inclusive figure

Fee Type	Fee* (GST Inclusive) (Specify \$ or %)
1) Management Fee: .....	.....
2) .....	.....
3) .....	.....
4) .....	.....
5) .....	.....
6) .....	.....
7) .....	.....
8) .....	.....
9) .....	.....
10) .....	.....
11) .....	.....
12) .....	.....
13) .....	.....

**E. PAYMENTS BY AGENT**

Clauses 6, 9.6, 9.7, 10.14, 12 & 21(8)

The Client authorises and directs the Agent to pay from rental the items marked to be paid.

Note: The Agent is not authorised to acquire the financial product or advise on such product (unless licensed to do so in accordance with the Financial Services Reform Act 2001)

**1. Insurance (List all insurance policies for Property)**

	To Pay	Insurer/Detail	Policy Number	Expiry
(1) Building	<input type="checkbox"/>	.....	.....	/ /
(2) Contents	<input type="checkbox"/>	.....	.....	/ /
(3) Public Liability	<input type="checkbox"/>	.....	.....	/ /
(4) Workers Comp.	<input type="checkbox"/>	.....	.....	/ /
(5) Landlord Protection	<input type="checkbox"/>	.....	.....	/ /
(6) .....	<input type="checkbox"/>	.....	.....	/ /
<b>2. Body Corporate Levies</b>				
(1) Sinking Fund	<input type="checkbox"/>	.....	.....	.....
(2) Administration Levy	<input type="checkbox"/>	.....	.....	.....
(3) .....	<input type="checkbox"/>	.....	.....	.....
<b>3. Caretaking</b>				
(1) Gardening	<input type="checkbox"/>	.....	.....	.....
(2) Pool	<input type="checkbox"/>	.....	.....	.....
(3) Pest	<input type="checkbox"/>	.....	.....	.....
(4) Cleaning	<input type="checkbox"/>	.....	.....	.....
(5) Repairs & Maintenance	<input type="checkbox"/>	.....	.....	.....
<b>4. Rates</b>				
<b>5. Other</b>				
(1) .....	<input type="checkbox"/>	.....	.....	.....
(2) .....	<input type="checkbox"/>	.....	.....	.....

**F. TENANT'S PAYMENTS**

Clauses 21(12) & 21(13)

Where the Tenant is responsible for payment of Water Consumption Charges a copy of the water rates notice must be provided.

(Tick 'Yes' if the Tenant must pay. Provide a percentage apportionment if applicable)

Electricity:  Yes  No ..... % Gas:  Yes  No ..... % Telephone:  Yes  No ..... %  
 Cable:  Yes  No ..... % :  Yes  No ..... %

**Water:** (Water Consumption Charges are only payable if the Property is separately metered)

Laws apply with respect to Water Consumption Charges under the Residential Tenancies and Rooming Accommodation Act 2008.

The Property is / is not water efficient in accordance with Section 22 of the Residential Tenancies & Rooming Accommodation Regulation 2009.

Tick only **one** of the boxes below

- The Tenant is required to pay the Water Consumption Charges for the Property if:
  - The Tenant's water service to the Property is individually metered (or water is delivered by vehicle), &
  - The Property is Water Efficient (see the Residential Tenancy Authority for information on Water Efficient devices and minimum ratings), &
  - The General Tenancy Agreement specifies an amount for Water Consumption that is payable by the Tenant
- Tenant to pay for Water Consumption costs in excess of the reasonable amount of water use agreed between the Tenant and the Landlord of .....
- Tenant not required to pay an amount for Water Consumption

**G. FURNISHINGS & FITTINGS INVENTORY**

Clauses 7.1, 11.2 & 11.3

To be prepared by **Agent / Client**

**1. Inclusions (for use by Tenant/s)**

(Insert inclusions, for example, furniture or other household goods let with the Property, as would be noted on the General Tenancy Agreement. Attach list if necessary)

**G. FURNISHINGS & FITTINGS INVENTORY (Continued)**

Clauses 7.1, 11.2 & 11.3

**2. Exclusions (not for use by Tenant/s)**

.....  
.....

**H. PERMITTED TENANTS**

Number: ..... Details: .....

**I. PETS**

Clauses 14.1(c) & 14.1(d)

Permitted:  Yes  No Details (if any): .....

**J. AGENT INSPECTIONS**

Clause 11

The Agent will perform ..... inspection/s per year and: .....

**K. LETTING / RE-LETTING INSTRUCTIONS**

Clauses 9.5 & 9.8

.....  
.....

**L. BODY CORPORATE DETAILS**

Clause 12

Name: .....

Address: .....

Secretary: .....

Phone: .....

Fax: .....

Email: .....

Manager: .....

Phone: .....

Fax: .....

Email: .....

**M. SERVICE AGENTS / MAINTENANCE CONTRACTS**

Clauses 10.2, 10.3 & 10.6

1) .....

2) .....

3) .....

4) .....

**N. PREFERRED TRADES PEOPLE**

Clauses 10.2, 10.3 & 10.6

Electrical Repairs: .....

Phone: .....

Plumbing Repairs: .....

Phone: .....

Building Repairs: .....

Phone: .....

Other: .....

Phone: .....

**O. TENANT INSPECTIONS**

Prospective tenants may / may not be provided with keys to perform an unsupervised inspection of the Property in accordance with any conditions stated below.

Conditions: .....

**P. ELECTRICAL SAFETY SWITCH**

Clause 1b

An Electrical Safety Power Switch is / is not installed for general purpose socket outlets.

(A Licensed Electrician can advise in relation to this requirement)

**Q. SMOKE ALARMS**

Clauses 7.1(f), 10.4 & 14.1(f)

1) Smoke alarms are / are not installed in accordance with Part 9A Division 5A of the Fire and Rescue Service Act 1990.

2) Service and maintenance of smoke alarms:

(a) Date smoke alarm last tested and cleaned: ..... / ..... / .....

(b) Date smoke alarm batteries last changed: ..... / ..... / .....

(c) Service life as indicated by the manufacturer's warranty: .....

3) The Client does / does not authorise the Agent to perform the Client's duties in respect to smoke alarms.

Client's Initials: .....

{Since the 1st July 2007 owners of all houses and units (domestic dwellings) in Queensland must install and maintain smoke alarms in compliance with the Fire and Rescue Service Act 1990 as amended.}

**R. POOL SAFETY CERTIFICATE**

Clauses 21(9), 21(10), 1.1(1) & 1.2(b)

(complete if the Property being let contains a Regulated Pool (shared or non-shared))

- 1)  **Shared Pool** (eg. Owned by a Body Corporate in a complex) - Property to be leased with one of the following:
  - Current Pool Safety Certificate Certificate No.: \_\_\_\_\_ Expiry: \_\_\_\_ / \_\_\_\_ / \_\_\_\_
  - Form 36 - Notice of no pool safety certificate
- 2)  **Non-Shared Pool\*** (eg. Owned by the owner of the Premises) - Property cannot be leased without a Current Pool Safety Certificate: \_\_\_\_\_ Certificate No.: \_\_\_\_\_ Expiry: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

**\* Note to Owners:**

If no current Pool Safety Certificate is in effect the Client must obtain the certificate prior to entering into, altering, extending or renewing a General Tenancy Agreement with Tenants. Failure to do so will result in substantial penalties under the Building Act 1975.

**S. CONJUNCTING AGENT/S** (Complete if applicable)

The Agent named in Part 2 of the attached PAMD Form 20a is acting in conjunction with the Agent/s below:

Conjuncting Agent: \_\_\_\_\_  
ABN: \_\_\_\_\_ Licence No.: \_\_\_\_\_ Licence Expiry: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

**T. ADDITIONAL INSTRUCTIONS**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**U. SPECIAL CONDITIONS FOR THIS APPOINTMENT**

Clause 18

Special Conditions to this Appointment where inserted at the direction of the Client were prepared by the Client or an Australian Legal Practitioner instructed by the Client and not by the Agent. No warranty is given by the Agent with respect to such clauses. Legal advice should be sought.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**V. SPECIAL TERMS FOR A GENERAL TENANCY AGREEMENT**

Clause 10.11

Any Special Terms inserted under instruction by the Client where not prepared by the Client were prepared by an Australian Legal Practitioner, not by the Agent, who gives no warranty in respect of same & in accordance with the warning in Item (Z), legal advice should be sought as to the meaning and effect of such Special Conditions before signing any General Tenancy Agreement.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**W. CLIENT'S PUBLIC LIABILITY INSURANCE**

Prior to signing, the Client should provide to the Agent, proof and details of current Public Liability Insurance, as listed below.

Insurer: \_\_\_\_\_ Policy No.: \_\_\_\_\_ Expiry Date: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

**X. DATE OF COMMENCEMENT OF APPOINTMENT**

\_\_\_\_ / \_\_\_\_ / \_\_\_\_ If left blank, will be the date of the last party (Client or Agent) signing.

**Y. AGREED NOTICE PERIOD**

Clause 16.1

Agreed notice (if less than 90 days) is \_\_\_\_\_ days.

**Z. SIGNING**

**WARNING:** By signing this Appointment the parties confirm that no legal advice as to the conditions contained herein was provided by the Agent. The parties have been advised to seek legal advice with respect to this Appointment.

Client's Signature: \_\_\_\_\_ Date: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

Client's Signature: \_\_\_\_\_ Date: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

Agent's Signature: \_\_\_\_\_ Date: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

**Terms of Appointment  
(being a schedule to and forming  
part of the approved PAMD Form 20a)**

**1. Appointment of Agent**

- 1.1 In consideration of and in accordance with the terms of this Appointment, the Client appoints the Agent and its permitted Assigns, and the Agent agrees to let and/or manage the Property for the Client. Authority vested in the Agent by this Appointment shall be deemed to be vested in the Agent's authorised employees.
- 1.2 The Agent is authorised to assign this Appointment provided such assignment is made in accordance with the terms and conditions of this Appointment.
- 1.3 The Agent is authorised to contact the Client in respect of other services which may be of interest or benefit to the Client.
- 1.4 Where details as to the type of appointment are not completed in Part 4.2 of the attached PAMD Form 20a this Appointment is a continuing appointment.
- 1.5 Where this Appointment is a continuing appointment and no end of continuing appointment has been specified in Part 4.2 of the attached PAMD Form 20a, the Appointment ends on the date specified in a notice given
- (1) by either party in accordance with Clause 16 of this Appointment.
  - (2) by the Client in accordance with Clause 8 of this Appointment.

**2. Prior Appointment by Client**

- 2.1 The Client has not appointed any other agent to let or manage the Property, or has revoked in writing any prior appointment to act with respect to the Property given to any other party.
- 2.2 If another party acts for the Client in providing the services set out in this Appointment, the Client will still be responsible for Commission and/or Fees to the Agent as outlined in this Appointment.

**3. Exclusive Appointment**

By signing this Appointment the Client appoints the Agent as Exclusive Agent. The Client will for the duration of this Appointment refer any prospective tenants of which the Client becomes aware to the Agent.

**4. General Tenancy Agreement**

The Client will be in breach of this Appointment should the Client fail to observe the provisions of any General Tenancy or other agreement entered into during the term of this Appointment under the *Residential Tenancies and Rooming Accommodation Act 2008* as amended. In the case of a breach which results in termination of the General Tenancy Agreement the Client must pay to the Agent:

- (1) all Commission and Fees then due and owing to the Agent
- (2) the Commission and Fees payable in respect of any balance of the term (not to exceed six months), of such General Tenancy Agreement subject to the Agent taking reasonable steps to mitigate any loss.

**5. Commission**

- 5.1 The Client will pay all Commission as more particularly detailed in Part (5) of the attached PAMD Form 20a. (Item (B) of the Item Schedule)
- 5.2 Notwithstanding the monetary amounts listed in Part (5) of the PAMD Form 20a and Item (B) of the Item Schedule, the actual amount of Commission will be calculated based on the percentage set out in Part (5) of the PAMD Form 20a. (Item (B) of the Item Schedule)

**6. Fees, Charges and Expenses**

The Client will pay all Fees and Charges as detailed in Part (6) and Expenses as detailed in Part (7) of the attached PAMD Form 20a or as outlined in Items (B), (D) & (E) in the Item Schedule. The Client authorises the Agent to deduct all such Fees, Charges, Expenses and other outlays owing to or incurred by the Agent in association with this Appointment where possible from rent collected.

**7. Client's Obligations Regarding Tenancy (Refer to the Residential Tenancies and Rooming Accommodation Act 2008, S185 for obligations generally)**

7.1 At the start of the tenancy the Client must ensure, at its own cost:

- (1) the Property and inclusions are clean and comply with local and state authority building and emergency services legislation.
- (2) the Property is safe and fit for the Tenant/s to live in.  
*Note: Prior to occupancy the Client should have the Property inspected by a person with appropriate experience in house maintenance.*
- (3) the Property and inclusions (including all locks and security fittings) are maintained and are in a reasonable state of repair.
- (4) after the General Tenancy Agreement is signed, sufficient keys to the Property are provided to the Agent and Tenant/s for each lock as provided in accordance with Section 210 of the *Residential Tenancies and Rooming Accommodation Act 2008*.
- (5) that telephone lead-in work (cabling) is completed to the premises to enable the tenant to connect a basic telephone service.
- (6) compliance with the *Fire and Rescue Service Act 1990* Part 9A, Division 5A (installation and maintenance of smoke alarms see Item (Q) of the Item Schedule)
- (7) Where the Property contains a Regulated Pool (shared or non-shared), compliance with its obligations under Chapter 8 of the *Building Act 1975* in respect to pool safety.

7.2 While the tenancy continues the Client must, at their own cost:

- (1) maintain the Property and inclusions in a reasonable state of repair, and comply with local and state authority building regulations.
- (2) ensure the Property is safe for the Tenant/s to live in.
- (3) keep any common area reasonably clean.
- (4) treat the Property as necessary by a licensed pest controller.
- (5) where Item (R)(2) applies, ensure that a current Pool Safety Certificate is in effect prior to entering into, altering, extending or renewing a General Tenancy Agreement with Tenants for the Property.

7.3 The Client warrants it is the owner of the Property and has full authority to enter into all General Tenancy Agreements.

7.4 All dealings with a Tenant regarding the tenancy are to be communicated and dealt with through the Agent.

**8. Property Sale or Transfer**

In the event of the Property being transferred by the Client:

- (1) the Client will forthwith inform the Agent in writing of the Real Estate Agent appointed to sell the Property.
- (2) the Client will promptly notify the Agent of the signing of a contract and of the Client's intention to terminate the Appointment giving the Agent not less than thirty days notice.

**9. Client Obligations and Authority**

9.1 The Client has at the time of entering into this Appointment disclosed to the Agent all relevant facts about the Property and has not provided information that is or is likely to be misleading or deceptive.

- 9.2 The Client will at all times during the currency of this Appointment keep the Agent advised of and disclose to the Agent in writing all relevant and material facts and changes thereto about the Property.
- 9.3 The Client does not rely on the Agent to determine the financial or credit suitability of any prospective tenant beyond the details set out or obtained in accordance with the Application for Tenancy used by the Agent.
- 9.4 The Client acknowledges once a General Tenancy Agreement has been entered into by the Client and Tenant the Agent is limited to its Obligations under this Appointment.
- 9.5 The Client authorises and directs the Agent to let, re-let (as necessary) and manage such letting of the Property at a Rent authorised by the Client or failing such authorisation for a fair and reasonable Rent as determined by the Agent, unless otherwise instructed by the Client in Item (K).
- 9.6 The Client must obtain and maintain the insurance policies listed, "to pay" in Item (E), and the Client must upon request, provide certificates annually for each insurance policy confirming the currency of such policies.
- 9.7 The Client must have public liability insurance and be covered for a minimum of 10 million dollars, in addition to any insurance provided by a body corporate for common areas. Such policy must be maintained for the term of this Appointment and the Client must upon request provide a certificate annually confirming the currency of such policy.
- 9.8 Notwithstanding the Agent's responsibility to refer suitable Tenant's based on the Agent's standard Application for Tenancy, final approval shall at all times be the responsibility of the Client as Landlord.
- 9.9 The Client must comply with the requirements of the *Fire and Rescue Service Act 1990* and the *Building Fire Safety Regulation 2008* together with all relevant acts, legislation, by-laws, rules & regulations local, state and federal.
- 10. Agent's Obligations and Authority**
- 10.1 Except as otherwise authorised by the Client, the Agent will be responsible for locating and introducing to the Client suitable prospective tenants in accordance with the criteria detailed in the Agent's Application for Tenancy so as to enable the Client to make an informed decision as to the suitability of the prospective tenants.
- 10.2 The Agent will seek the Client's written approval before ordering repairs or maintenance in excess of the authorised amount specified in Part (6.3) of the attached PAMD Form 20a or any amount otherwise specified by the Client in writing.
- 10.3 The Agent must where required or necessary, organise repairs, service and maintenance (utilising where appropriate, a licensed tradesperson) and where possible utilise those services of the persons detailed in Item (N) of the Item Schedule.  
Note: The Client acknowledges that where a self-employed tradesperson is paid under a contract that is wholly or principally for their labour, provision should be made for superannuation contributions as individual tradespersons could be considered employees for super guarantee purposes.
- 10.4 Where the Agent is authorised and directed to carry out the Client's duties in respect of matters detailed in Clause 7.1 & 7.2 the Agent is authorised and reserves the right to employ the services of a suitably licensed tradesperson to carry out such requirements and bill the cost thereof to the Client.
- 10.5 When appointing tradespersons the Agent must exercise proper due diligence and in so doing, except in the case of negligence on the part of the Agent, will not be liable for loss or damage caused by or resultant upon the tradespersons carrying out works.
- 10.6 Urgent repairs or maintenance particularly relating to the safety of person or property may be carried out at the Agent's discretion if the Client is not readily contactable.
- 10.7 The Agent will take reasonable steps to ensure goods or services obtained for the Client are at competitive prices.
- 10.8 The Agent will not induce or attempt to induce, a breach of, or an interference with, a Contract between the Client and a tenant.
- 10.9 The Agent will maintain its Licence in accordance with the *Property Agents and Motor Dealers Act 2000*.
- 10.10 The Agent will advise the Client upon the termination of any General Tenancy Agreement and/or vacancy of the Property.
- 10.11 The Agent will, subject to the *Residential Tenancies and Rooming Accommodation Act 2008* and other Applicable Legislation, negotiate, finalise and where necessary, execute on behalf of the Client any General Tenancy Agreement or any amendments or variations thereto, including any other documents in relation to the tenancy arising from this Appointment.
- 10.12 The Agent is to collect and receive all monies payable (Rent, bond and otherwise) under any General Tenancy Agreement entered into pursuant to this Appointment.
- 10.13 The Agent must account in writing to the Client with respect to Clause 10.12 and those monies paid or used by the Agent carrying out the Agent's Obligations under this Appointment.
- 10.14 The Agent will make all payments required under and in accordance with this Appointment and which the Agent may have an obligation to make as the Client's Agent.
- 10.15 The Agent is authorised to apply to the Residential Tenancy Authority for payment of the Tenant's bond to recover all monies including unpaid rent under the General Tenancy Agreement relevant to the Property.
- 10.16 The Agent will promptly respond to and, subject to the Client's written instructions, attend to all reasonable requests by the Client for service, maintenance of, and repairs to, the Property.
- 10.17 The Agent will not engage a person to perform building work unless the person holds a licence under the *Queensland Building and Construction Commission Act 1991* authorising the performance of the work.
- 10.18 The Agent must immediately notify the Client in writing if the Agent becomes aware of a tenant's breach, which is in the Agent's opinion a fundamental breach of the General Tenancy Agreement.
- 10.19 In relation to expressions of interest the Agent will keep the Client advised of enquiries regarding the re-letting and letting of the Property.
- 10.20 The Agent is authorised to, and in so doing may, on obtaining written instruction from the Client, use independent legal services, to recover monies due and unpaid by the Tenant subject to the General Tenancy Agreement.
- 10.21 When dealing with prospective tenants the Agent will comply with the Code of Conduct which does not preclude the Agent from ascertaining the Tenant's suitability to rent the Property.
- 11. Property Inspection**
- 11.1 The Client will comply with all obligations with respect to condition reports and inspection required by the *Residential Tenancies and Rooming Accommodation Act 2008* or the General Tenancy Agreement.
- 11.2 The Agent is required to complete an Inventory and/or inspection report of the Property if specified in Item (G) & (J) of the Item Schedule.
- 11.3 The Agent will notify the Client in writing of any serious tenant's complaint or defect to the Property (subject to the limitations set out in Clause 14.2) creating a possible liability.

- 11.4 The Client will be responsible for rectification of matters notified under Clause 11.3.
- 12. Body Corporate**
- 12.1 Should the Property be subject to Building Units and Group Titles Legislation, the Agent is authorised and directed to deal in all matters relevant to this Appointment and any General Tenancy Agreement entered into under the authority of this Appointment with the relevant Body Corporate.
- 12.2 The Agent is authorised to obtain from the Body Corporate a copy of current by-laws. A copy of such by-laws are to be provided to all Tenants by the Agent upon occupying the Property.
- 12.3 The Client must instruct the Body Corporate to provide the Agent with revised by-laws when and if such by-laws are amended.
- 13. Work Health and Safety**
- Insofar as either party to this Appointment is, with respect to the Premises a - Person Conducting a Business or Undertaking (under the *Work Health and Safety Act 2011*, Regulations or relevant Codes of Practice in relation thereto) such party must comply with the Act, Regulations or relevant Codes of Practice. Provided however, in carrying out such obligations the Agent acts only as Agent for the Client.
- 14. Indemnity**
- 14.1 The Agent having complied with its obligations under this Appointment and not having been negligent, the Client indemnifies the Agent, its officers and employees, from and against all actions, claims, demands, losses, costs, damages and expenses arising out of or in respect of this Appointment from;
- (a) the Client's failure to comply with this Appointment and/or Applicable Legislation; or
  - (b) the Client's failure to give the Agent prompt and appropriate authority or instruction, or sufficient funds to carry out an instruction or authority; or
  - (c) the Tenant's failure to comply with his/her obligations according to the General Tenancy Agreement, at no fault of the Agent; or
  - (d) the Tenant's failure to comply with his/her obligations under the *Residential Tenancies and Rooming Accommodation Act 2008* and or other Applicable Legislation; or
  - (e) the Agent acting on behalf of the Client under this Appointment; or
  - (f) any loss arising from injury to person or damage to property howsoever caused (except in the case of negligence on the part of the Agent).
- 14.2 The Client acknowledges that the Agent is acting only as a licensed letting and/or managing agent and is not responsible for reporting any matters (including defects latent or otherwise) other than those that are readily apparent during the course of standard periodic inspections (see Clause 11) or as brought to their attention as letting agent by the Tenant.
- The Agent is not otherwise qualified and it is the Client's responsibility to obtain specific advice with respect to the Property and its soundness as to building and structural integrity, pest, health, fire safety and other requirements. As such, the Client indemnifies the Agent from and against all actions, claims, demands, losses, costs, damages and expenses arising out of, or in respect of this Appointment, resulting from matters of cleanliness, safety, construction, building requirements or building deterioration, notwithstanding the Agent's obligations under Clause 11.
- 15. Electrical Safety Switch**
- If an Electrical Safety Switch is not installed on the Property, the Client must install an approved Electrical Safety Switch. (See Section 80A of the Electrical Safety Regulation 2002)

- 16. Termination**
- 16.1 Either party may terminate this Appointment by giving notice in accordance with Part (4.2) of the attached PAMD Form 20a for the time specified therein or such time as is otherwise specified in Item (Y) of the Item Schedule.
- 16.2 In the event of the Client committing to sell or transfer the Property the Client will terminate this Appointment in accordance with Clause 8 of this Appointment.
- 16.3 Any Termination shall be without prejudice to either party's rights under this Appointment.
- 16.4 Upon Termination of this Appointment the Client must pay, within the time period specified in Part (4) of the attached PAMD Form 20a, to the Agent all Fees and Commission then due and owing to the Agent.
- 17. Provision of Appointment**
- Each party has received a signed copy of this document and understands such document or has had the opportunity to obtain professional advice with respect to the Appointment and each party acknowledges it is bound by the terms of this Appointment which include the attached PAMD Form 20a and all schedules annexed thereto and each party acknowledges this Appointment constitutes the entire agreement between the parties.
- 18. Special Conditions**
- Any Special Conditions to this Appointment shall form part of this Appointment. Should there be inconsistency between these Terms of Appointment and a Special Condition, the Special Condition will apply. All Special Conditions must be in compliance with the *Residential Tenancies and Rooming Accommodation Act 2008*.
- 19. Privacy Statement**
- 19.1 The Agent collects and uses personal information provided by you as the Client to provide the services required by you or on your behalf.
- 19.2 You as Client agree the Agent may subject to the *Privacy Act 1988 (CTH)* (where applicable), collect, use and disclose such information to:
- (1) potential tenants, to the extent required to complete a General Tenancy Agreement; and/or
  - (2) property data collection agencies; and/or
  - (3) Body Corporates & financial institutions; and/or
  - (4) tradespeople and similar contractors in order to facilitate the carrying out of works with respect to the Property; and/or
  - (5) other third parties as may be required by the Agent for the purposes of marketing, sales promotion and administration relating to the use of the Agent's products and services and complying with legislative and regulatory requirements.
- 19.3 Without provision of certain information the Agent may not be able to act effectively or at all on the Client's behalf.
- 19.4 The Client has the right to access such personal information and may require correction or amendment of any inaccurate, incomplete, out of date or irrelevant information.
- 20. Provision of Documents**
- The parties agree and confirm this Appointment may be forwarded electronically if the recipient has provided an email address or facsimile number in the Item Schedule to this Appointment.

**21. Definitions**

In this Schedule the following terms mean:

- (1) **Applicable Legislation:** Reference to relevant Legislation includes Queensland Government Legislation generally but particularly the *Property Agents & Motor Dealer's Act 2000*, regulations and amendments thereto, including (*Real Estate Agency Practice Code of Conduct*) Regulation 2001, *Property Law Act*, *Queensland Building and Construction Commission Act 1991*, *A New Tax System (Goods & Services Tax) Act 1999*, *Electrical Safety Regulation 2002*, *Fire and Rescue Service Act 1990*, *Building Fire Safety Regulation 2008*, *Residential Tenancies and Rooming Accommodation Act 2008* as amended and the *Work Health & Safety Act 2011*.
- (2) **Appointment:** the PAMD Form 20a Appointment to Act as Real Estate Agent including the whole of this document.
- (3) **Building Work:** refer to the *Queensland Building and Construction Commission Act 1991*, Schedule 2
- (4) **Code of Conduct:** the *Property Agents and Motor Dealers (Real Estate Agency Practice Code of Conduct) Regulation 2001*.
- (5) **Condition Report:** a report in compliance with Section 65 or Section 66 of the *Residential Tenancies and Rooming Accommodation Act 2008*.
- (6) **Fee:** an amount charged by the Agent for a service provided.
- (7) **General Tenancy Agreement:** any general tenancy or other agreement with respect to the letting of the Property complying with the provisions of the *Residential Tenancies and Rooming Accommodation Act 2008* as amended.
- (8) **GST:** meaning used in the *A New Tax System (Goods & Services Tax) Act 1999* and "GST" includes any applicable rulings issued by the Commissioner of Taxation.
- (9) **Pool Safety Certificate:** means the certificate issued with respect to a Regulated Pool (shared or non-shared) that complies with the Pool Safety Standards in accordance with Chapter 8 of the *Building Act 1975*.  
*Note: For Shared Pools - a Pool Safety Certificate is valid for one year*  
*For Non-shared Pools - a Pool Safety Certificate is valid for two years.*
- (10) **Regulated Pool:** where used in this document has the same meaning as given to it by Section 231B of the *Building Act 1975*.
- (11) **Tenant:** is the person to whom the right to occupy the Property under a General Tenancy Agreement is given.
- (12) **Utilities:** services such as gas, electricity or water provided by a public utility.
- (13) **Water Consumption Charge:** is the variable part of a water service charge assessed on the volume of water supplied to the Property.

**22. Using this Form**

Where such information is required to be entered on the approved form, information contained in the Item Schedule and the Terms of Appointment shall apply to the approved PAMD Form 20a.

# EXCLUSIVE SELLING AGENCY AUTHORITY (Residential)

Item

## Item Schedule

### 1. VENDOR

Name/s: .....  
Business Name: .....  
Address: .....  
ABN: ..... Phone: ..... Fax: ..... Mobile: .....  
Email: ..... GST Registered: Yes / No

### 2. AGENT

Clause 1.1(2)

Name/s: .....  
Address: .....  
ABN: ..... Phone: ..... Fax: ..... Mobile: .....  
Contact: .....  
Email: .....

### 3. PROPERTY (Includes land and all improvements)

Clause 1.1(9)

3.1 Address: .....  
Real Property Description: .....

#### 3.2 Included Fittings / Furnishings / Chattels:

.....  
.....

#### 3.3 Property is Sold: Subject To Tenancy / With Vacant Possession

### 4. VENDOR'S SALE PRICE & SETTLEMENT

Clause 5.4

*Note: Vendor should obtain independent advice as to Sale Price*

Vendor's Sale Price: ..... GST exempt / including GST  
Vendor's Preferred Settlement Date: ..... days from date of Contract

### 5. AGENT'S ESTIMATE OF SELLING PRICE (Section 47A of the Estate Agents Act 1980)

Clause 9

*Note: This amount is an estimate not a valuation. The GST status of any estimate is as indicated in Item 4.*

*Note: If a price range is specified, the difference between the upper and lower amounts cannot be more than 10% of the lower amount.*

Single amount: \$ ..... OR Between: \$ ..... and \$ .....

### 6. TERM OF EXCLUSIVE AUTHORITY (SOLE AGENCY)

Clauses 3 & 7.1(a)

6.1 This Exclusive Authority will be for a period of ..... days from the date of signing this Authority.

#### 6.2 Note: Section 54 (1) of the Estate Agents Act 1980

If an agreement stating that an estate agent is to act as the sole agent for the sale of any real estate or business does not state when the sole agency is to end, the sole agency ends:

- (a) in the case of a sale by auction, 30 days after the date of the auction; or
- (b) in any other case, 60 days after the date the agreement is signed by, or on behalf of, the vendor of the real estate or business.

### 7. ONGOING AUTHORITY PERIOD

Clauses 3.3 & 7.1(b)

At the end of the term of the Exclusive Authority (Item 6), unless terminated, this Authority will continue as an ongoing authority for a period of ..... days (ongoing authority period).

*Note: Where no days are inserted, the period shall be 1 Business Day.*

### 8. SPECIAL INSTRUCTIONS

#### 8.1

.....  
.....  
.....

**8. SPECIAL INSTRUCTIONS (Continued)**

8.2 The Agent is authorised to advertise the Property for the following price or price range:

Single amount: \$ ..... OR Between: \$ ..... and \$ .....

**9. FEE PAYABLE TO AGENT FOR SERVICES**

Clause 7

*(this statement must be incorporated within the Authority in the approved form - s49A(1)(c) Estate Agents Act 1980)*

Selling Fee: Based on an estimated Selling Price of \$ ..... **GST Exempt / Including GST**  
the Agent's Selling Fee would be as calculated using one of the following methods:

- ..... % of the Selling Price
- ..... % of the first \$ ..... of the Selling Price plus ..... % of the balance
- Fixed Amount of \$ ..... plus GST
- Other: .....

Where calculated on a % basis, as set out above, the Selling Fee as an actual dollar amount would be:

Selling Fee: \$ ..... plus GST of \$ ..... **Total Fee Payable: \$ .....** (incl. GST)

**10. EXPENSES (Attach schedule if insufficient room)**

Clauses 7.7 & 7.9

The Vendor shall reimburse the Agent for the following authorised Expenses incurred during the term of this Authority:

Expense	Amount (Include GST)	*Due and Payable
Advertising		

\* When Due and Payable is left blank, Expenses are payable on receipt by the Vendor of an itemised invoice.  
[Note: Payment is not dependent upon a sale taking place]

**11. COMMISSION SHARING**

Clause 7.11

Will the Agent's commission be shared with other people (other than a licensed estate agent or an agent's representative employed by the agent, or a licensed agent who is in partnership with the agent)?

- Yes  No (Important - if "Yes", see Clause 2.1(9))

**12. MAKING A COMPLAINT CONCERNING COMMISSIONS AND/OR OUTGOINGS**

*(this statement must be incorporated within the Authority in the approved form - s49A(1)(c) Estate Agents Act 1980)*

Any complaint relating to commission or outgoings can be made to the Director, Consumer Affairs Victoria (CAV), GPO Box 123, Melbourne, Victoria, 3001 or by telephoning 1300 73 70 30.

Unless there are exceptional circumstances Consumer Affairs Victoria cannot deal with any dispute concerning commission or outgoings unless it is given notice of the dispute within 28 days of the client receiving an account for, or notice that the Agent has taken the amount in dispute, whichever is later.

**13. SPECIAL CONDITIONS**

Clause 12

The Special Conditions are inserted under instruction from a party to this Authority and where not prepared by that party, were prepared by an Australian Legal Practitioner and not the Agent. No warranty is given by the Agent. Legal advice should be sought.

.....

.....

.....

.....

.....

.....

.....

.....

**14. REBATE STATEMENT**

*(this statement must be incorporated within the Authority in the approved form - s49A(1)(c) Estate Agents Act 1980)*

**Important information for Vendor(s)**

A rebate includes any discount, commission, or other benefit, and includes non-monetary benefits. It is illegal for an Agent to keep any rebate they receive for advertising or other outgoings purchased by the Agent on your behalf. Section 48A of the *Estate Agents Act 1980* requires the Agent to immediately pay you any rebate they receive in relation to the sale of your property.

The Agent is not entitled to retain any rebate and must not charge you an amount for any expenses that is more than the cost of those expenses.

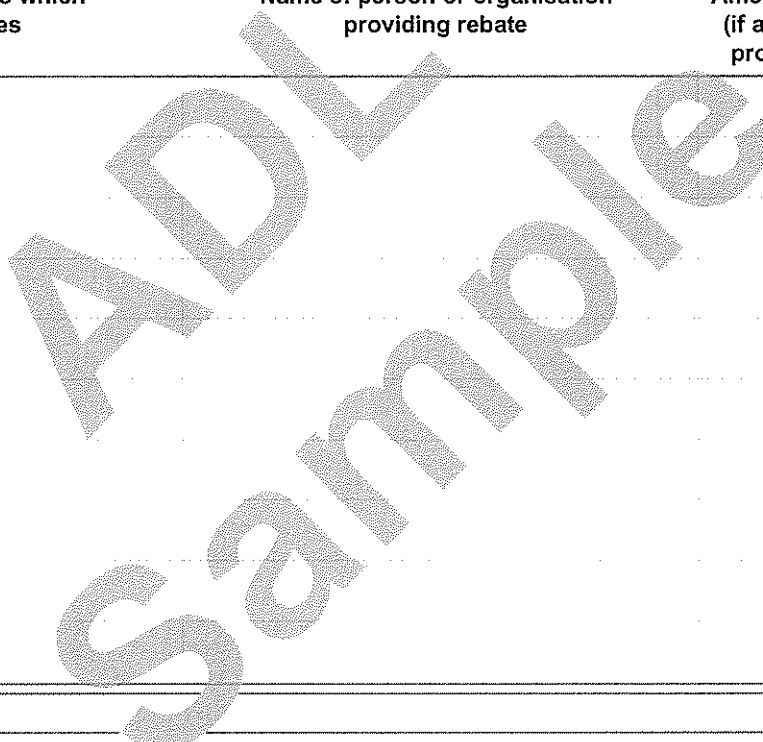
The Agent will not be, or is not likely to be, entitled to any rebates.

**OR**

The Agent will be, or is likely to be, entitled to rebates.

These rebates are listed below.

- any outgoings; or
- any pre-payments made by the person engaging or appointing the Agent (the Client) in respect of any intended expenditure by the Agent on the Client's behalf; or
- any payments made by the Client to another person in respect of the work.

Goods/Services to which rebate relates	Name of person or organisation providing rebate	Amount (including GST) (if amount not known, provide an estimate)
		

**15. SIGNATURES**

Signature of Agent:

..... Date: .. / .. / ..

**By signing this Authority the Vendor(s) confirm(s) having read and understood the provisions of Clause 2.1 of the Authority.**

Signatures of Vendor(s):

..... Date: .. / .. / ..

..... Date: .. / .. / ..

..... Date: .. / .. / ..

## Terms of Authority

### 1. Definitions

1.1 In this Authority, which includes the Item Schedule, the following terms mean:

- (1) **Act:** the *Estate Agents Act 1980* as amended.
- (2) **Agent:** means the Agent set out in Item (2) together with the Agent's representative as defined by the Act.
- (3) **Authority:** this Exclusive Selling Agency Authority consisting of the Item Schedule, Terms of Authority and any additional schedules that may be attached.
- (4) **Commission:** includes fees, charges, rewards or other remuneration whether monetary or otherwise.
- (5) **Expenses:** any cost or charge incurred by the Agent (including in respect of advertising or marketing) in carrying out the Agent's obligations under this Authority.
- (6) **GST:** where used in this Authority, has the meaning used in *A New Tax System (Goods & Services Tax) Act 1999* and "GST" includes any applicable rulings issued by the Commissioner of Taxation.
- (7) **GST Act:** refers to the *A New Tax System (Goods & Services Tax) Act 1999*.
- (8) **Item:** an Item in the Item Schedule forming part of this Authority.
- (9) **Property:** the Property as described in Item (3).
- (10) **Relevant & Material Facts:** facts relating to the Vendor's obligations and authority as detailed in Clause 5, including but without limitation, property ownership, tenancy agreements, safety and condition of the Property and fittings and compliance with relevant Government legislation.

1.2 Other words and phrases not defined in this Authority will, where applicable, take on those meanings given to them in the Act.

### 2. Vendor's Confirmation

2.1 By signing this Authority the Vendor(s) warrants and confirms:

- (1) having read this Authority.
- (2) being authorised to enter into this Authority.
- (3) having authority to grant the Agent selling rights of the Property.
- (4) the Property is not subject to any binding sale contract at the time of entering into this Authority.
- (5) that, in accordance with s 49A(1)(b) of the *Estate Agents Act 1980*, prior to signing this Authority the Vendor was advised by the Agent that Expenses and Commission were subject to negotiation.
- (6) having received at the time of signing a signed copy of this Authority.
- (7) having had the opportunity to obtain legal and other professional advice with respect to this Authority.
- (8) that, prior to signing, the Vendor's attention has been drawn to Item (11) *Commission Sharing*, Item (12) *Making a Complaint Concerning Commission and/or Outgoings*, Item (14) *Rebate Statement* and Clause 13 *Dispute Resolution*.
- (9) Where commission sharing is applicable as indicated in Item (11) the Vendor acknowledges, prior to signing this Authority, having received a notice of commission sharing in accordance with section 48 of the *Estate Agents Act 1980*.

2.2 Where the Vendor is a proprietary company the Agent may require the directors of such company to provide personal guarantees guaranteeing the company's performance under this Authority.

### 3. Agency and Authority

#### 3.1 Exclusive Authority

The Vendor by this Authority appoints the Agent as Exclusive Selling (Sole) Agent for the term of this Authority as set out in Item (6) or any extension to the exclusive authority period and will refer any prospective buyers of which the Vendor becomes aware to the Agent. Authority vested in the Agent by this Authority shall be deemed to be vested in the Agent's authorised employees.

3.2 The Agent agrees to such appointment.

#### 3.3 Ongoing Authority

Either party may terminate this Authority during the ongoing authority period at any time on the giving of not less than 14 days written notice. Such termination will be without prejudice to either party's existing rights, duties or obligations.

### 4. Agent's Selling Obligations and Authority

4.1 (1) The Agent will market the Property, as instructed by the Vendor in accordance with this Exclusive Selling Authority.

(2) The Agent is authorised to advertise the Property for sale, in accordance with the Vendor's instructions, at the Vendor's Sale Price (Item 4) or such other price as the Vendor may from time to time instruct in writing.

4.2 The Agent will take reasonable steps to ensure goods and services obtained for the Vendor are at competitive prices.

4.3 (1) The Agent must provide financial statements and account to the Vendor with respect to all monies received, paid or used by the Agent, carrying out the Agent's obligations under this Authority.

(2) The Agent will issue tax invoices, when necessary or required by the Vendor, in respect of all monies owing by the Vendor to the Agent.

4.4 The Agent's authority does not extend beyond the terms of this Authority and the Agent will not be required to provide services not authorised by this Authority.

4.5 Where authorised in writing to do so by the Vendor, the Agent may:

- (1) participate in the exchange or filling up of the sale contract.
- (2) sign the Contract where the terms have been agreed to by the Vendor.

4.6 Any services provided will be appropriate and carried out with all reasonable due care and skill.

### 5. Vendor's Obligations and Authority

5.1 The Vendor has at the time of entering into this Authority:

- (a) disclosed to the Agent all relevant and material facts
- (b) made no statement with respect to the land which the Vendor knows or has reason to believe may be misleading or deceptive. (Section 12 of the *Sale of Land Act 1962*)
- (c) provided all information relevant to Section 32 of the *Sale of Land Act 1962*.

5.2 The Vendor will at all times during the currency of this Authority keep the Agent advised of and disclose to the Agent in writing details, reasonably known to the Vendor, of any defects or want of repair to the Property likely to result in or cause injury to persons occupying, entering upon or using the Property.

5.3 The Vendor acknowledges, for the purposes of Clause 5.1, having been advised by the Agent of its obligations with respect to the relevant sections of the *Sale of Land Act 1962*, in particular Sections 12 & 32.

- 5.4 Where the Vendor has nominated a Vendor's Sale Price in Item (4) the Vendor must consider offers to buy at that price.
- 6. Indemnity**  
The Agent having complied with its obligations under this Authority and not having been negligent, the Vendor indemnifies the Agent, its officers and employees, from and against all actions, claims, demands, losses, costs, damages and expenses (including Fees and Expenses) which the Agent may suffer or incur in respect of:
- the Vendor's failure (without fault on the part of the Agent) to comply with this Authority; or
  - the Vendor's failure to give the Agent appropriate authority or instruction, or sufficient funds to carry out an instruction or authority; or
  - in accordance with the terms and conditions of this Authority, the Agent acting on behalf of the Vendor under this Authority.
- 7. Agent's Fee Reimbursement**
- 7.1 The Vendor acknowledges the Agent is entitled to the Selling Fee if:
- during the initial or any extended exclusive authority period (Item 6), the Property is sold; or
  - during the ongoing authority period (Item 7) the Property is sold and the Agent is the effective cause of sale; or
  - within 120 days after the conclusion of the exclusive authority period, the Property is sold to a Buyer introduced by the Agent during the exclusive authority period and the Agent is the effective cause of the sale; or
  - a binding sale contract is entered into or in accordance with Clauses 7.1(a), 7.1(b) or 7.1(c) and not completed due to:
    - cancellation by mutual consent
    - the default of the Vendor
    - repudiation by the Vendor
    - breach of warranty by the Vendor resulting in termination of the Contract by the Buyer.
- 7.2 The Agent will be entitled to the Selling Fee if the Property is sold during the exclusive authority period irrespective of whether the Property is sold by the Agent, Vendor or another person.
- 7.3 The Selling Fee will be calculated on the actual price the Property is sold for (Selling Price) notwithstanding such Selling Price may be greater or less than the Vendor's Sale Price set out in Item (4).
- 7.4 The Selling Fee, as detailed in Item (9), will be payable by the Vendor on settlement of the sale or within 7 days of the Vendor's default in Clause 7.1(d).
- 7.5 The Vendor authorises and directs the Selling Fee and Expenses (including taxes and GST if applicable) to be paid to the Agent by the person holding the deposit monies or other monies due under the contract for the sale of the Property, be that the stakeholder or other person as provided herein. The Authority shall be sufficient authority and discharge for such payment.
- 7.6 The Agent will not be entitled to the Selling Fee (Item 9) if after the termination or conclusion of this Authority the Vendor has signed an Exclusive Authority with another Agent.
- 7.7 The Agent is entitled to Fees for Services and reimbursement or payment of Expenses (including any taxes or deductions debited by financial institutions against the Agent's account and attributable to the affairs of the Vendor) as set out in Items (9) and (10) respectively, and whilst this Authority is in force and provided there are no genuine disputes as to the Agent's conduct of this Authority, is irrevocably authorised to deduct from monies received by the Agent on behalf of the Vendor all such Fees, Commissions and Expenses.
- 7.8 This Authority cannot be varied without agreement in writing signed by the parties.
- 7.9 Unless otherwise stated, all prices of Goods and Services under this Authority include (where applicable) GST.
- 7.10 If the Agent is entitled to an input tax credit on any payment or expense the Vendor will reimburse such payment or expense to the Agent at its GST free value unless payment by the Vendor to the Agent amounts to a taxable supply as defined in the GST Act in which case the Vendor will pay the payment or expense plus GST.
- 7.11 The Vendor acknowledges the Agent may, during the term of the Authority, to better facilitate the provisions of the Authority, utilise the services of another Agent in which case there may be commission sharing and upon the Vendor granting consent to commission sharing, which consent will not be unreasonably withheld, the Vendor will complete a new Authority making such provision, but otherwise on the same terms as this Authority (unless amendment is agreed to) including completion of Item (11) to enable such commission sharing for the balance term of this Authority.
- 7.12 The parties agree the Property is sold, or a sale obtained, when a binding contract, which is obtained in compliance with this Authority for the sale of this Property becomes unconditional.
- 7.13 The parties agree a Buyer will have been introduced to a property where the Agent has been a source of information with respect to bringing to the attention of a Buyer that such property is available for purchase.
- 8. Interest on Overdue Monies**  
Any monies payable under this Authority by the Vendor to the Agent (or any judgment given in respect of this Authority) not paid when due will attract interest from the due date for payment, to the date of payment at the rate prescribed by the Attorney General in accordance with the *Penalty Interest Rates Act 1983*.
- 9. Agent's Opinion**
- The Agent makes no representation as to being a financial or investment advisor.
  - The Agent's Estimated Selling Price range is applicable as at the date of this Authority and is the Agent's honest and fair opinion of the estimated value.
  - Nothing in this section requires the Estimated Selling Price (Item 5) and the Vendor's Sale Price (Item 4) to be the same amount.
  - An Agent making a false representation as to the Estimate Selling Price commits an offense under the Act in which case penalties apply.
- 10. Buyer's Default**  
In the case of default by the Buyer in not completing the purchase the Vendor will pay the Agent's Fees and/or Expenses and to do so may utilize any forfeited or recovered deposit monies. Should any balance Fees and/or Expenses remain unpaid thereafter, the Vendor shall pay same in accordance with this Authority.

**11. Provision of Documents**

The parties agree and confirm documents may be forwarded electronically if the recipient has provided an email address or facsimile number in the Item Schedule to this Authority.

**12. Special Conditions**

Any Special Conditions to this Authority shall form part of this Authority. Should there be inconsistency between the terms of this Authority and a Special Condition, the Special Condition shall apply.

**13. Dispute Resolution**

In compliance with the *Estate Agents (Professional Conduct) Regulations 2008* the Agent has in place procedures for resolving complaints and disputes arising from the operation of the Agent's estate agency practice. If a complaint is made the Agent will advise the dispute resolving procedures. The Agent will make every effort to minimize or resolve disputes relating to the Agent's performance.

**14. Privacy Statement**

14.1 The Agent collects and uses personal information provided by you as the Vendor to provide the services required by you or on your behalf.

14.2 You as the Vendor agree the Agent may subject to the *Privacy Act 1988 (CTH)* (where applicable), collect, use and disclose such information to:

- (1) potential buyers; and/or
- (2) property data collection agencies; and/or
- (3) Body Corporates & financial institutions; and/or
- (4) other third parties as may be required by the Agent for the purposes of marketing, sales promotion, administration and complying with legislative and regulatory requirements.

14.3 Without provision of certain information the Agent may not be able to act effectively or at all on the Vendor's behalf.

14.4 The Vendor has the right to access such information and may require correction or amendment of any inaccurate, incomplete, out of date or irrelevant information.

14.5 By signing this Authority the Vendor consents to the collection and use of information as provided for in this Privacy Statement.

ADL  
Sample

17 January 2014

2013 Corporate Partners



The Research Director  
Legal Affairs and Community Safety Committee  
Parliament House  
George Street  
Brisbane, Qld 4000

Dear Mr Hastie

## Property Occupations Bill 2013

Thank you for the opportunity to provide feedback on the *Property Occupations Bill 2013* (Bill).

In early 2013, the Property Council lodged a comprehensive submission in response to the public release of the Queensland Government's draft Agent's Bills. The submission provided numerous suggestions for red tape reduction, along with an outline of issues that remained of concern to the property industry. It has been attached again for your reference.

We are pleased to note the majority of issues previously raised with the Department of Justice and Attorney-General (Department) have been addressed in the Bill.

The Bill is seen by the property industry as an improvement on the current *Property Agents and Motor Dealers Act 2000* (PAMDA), as it reduces red tape and regulation while continuing to provide comprehensive protections for consumers.

The Property Council provides the following comments, for your consideration:

### Exemptions

Of particular benefit to the property industry in Queensland will be the Bill's introduction of exemptions for non-residential transactions between related entities and for 'sophisticated owners'.

The *Objects of the Act* focus on the balance between protection of consumers and 'the promotion of freedom in the market place', with particular emphasis on residential property.

As the majority of non-residential transactions are business-to-business rather than business-to-consumer, it is unclear why all property transactions have historically been subject to the requirements of legislation designed to protect consumers.

As noted in our previous submission, research undertaken by the Shopping Centre Council of Australia indicates that non-residential transactions between related entities or sophisticated owners currently incur costs in excess of \$2.4 million annually, in order to comply with the legislation.

## 2013 Corporate Partners



Providing exemptions for related entities and sophisticated owners will benefit not only the property industry, but also provide time and cost savings for the government departments responsible for administering the legislation, without the risk of reducing consumer protections.

Queensland is the first state in Australia to introduce these exemptions for related entities, and the Government is to be commended for taking this proactive step to reduce unnecessary red tape.

Additionally, the Property Council supports the exemption from Part 7 for residential sales contracts involving 'sophisticated parties'.

This exemption will provide further time and cost savings for those parties experienced in property transactions, who do not require the consumer protections of the Act.

In our submission of 11 March 2013, the Property Council drew the Department's attention to the current situation whereby a buyer is able to sign a contract calling on an option to buy, and then exercise their right to terminate the contract under the subsequent 5 day cooling off period.

The Property Council is pleased to see the Bill has been amended to include exemptions from the definition of 'relevant contract' where contracts have been formed through the exercise of an option granted under an earlier contract.

## Licensing

The Property Council supports the removal of licensing requirements for property developers, bringing Queensland in line with other jurisdictions in Australia.

The rationalization and consolidation of categories of licenses under the new legislation will reduce administration time and costs both for government and the property industry.

## Sales contracts

Through introducing penalties for the seller or the seller's agent for technical breaches to the legislation, rather than allowing buyers the option to terminate contracts on this basis, the level of litigation associated with technical breaches can be expected to reduce considerably.

The Bill's simplification of the definition of 'residential property', will be of particular benefit to the industry in situations where it is unclear whether or not a contract is a 'relevant contract'.

Additionally, the removal of strict requirements, such as a warning statement, body corporate information sheet and statement directing the buyer's attention to the warnings, will streamline and simplify residential sales contracts and limit avenues for litigation.

## 2013 Corporate Partners



For consumers, the removal of the requirement to involve a lawyer and specify the section of legislation under which they are terminating a contract during a cooling off period will save time and money, and limit the potential for litigation surrounding references to relevant sections of legislation.

### Notice of vacant land requirements

In our submission of 11 March 2013, the Property Council drew particular attention to the requirement under the draft Bill for prospective purchasers to be given a written statement where vacant land is not lawfully useable for residential purposes.

The Property Council is pleased to note our submission has been considered by the Department, with the removal of the requirement for agents to provide a written statement of vacant land.

This will provide time and cost savings for both buyers and sellers, as well as returning the onus to the buyer to undertake their own due diligence.

### Commission and Disclosure

The Property Council supports the removal of maximum caps on real estate commission, not only as a means to introduce further competition, but also to bring Queensland in line with other states.

Allowing agents to obtain commission where they have an interest, provided that interest has been disclosed to and acknowledged by the seller, will ensure agents are able to receive a commission for their services, rather than being penalized for having an interest.

A significant issue with disclosure continues to exist, however, as a result of Sections 157 and 158 of the Bill, as they relate to the sale of house and land packages.

The Explanatory Notes clarify these sections are intended to ensure that all marketing costs, regardless of whether they have been paid directly to another person, or passed on through the land or building contract, must be disclosed.

While the protection of consumers from undesirable practices is supported, as noted in our previous submission, this provision has the potential to impact on broader issues, including valuations and bank finance.

If a developer is required to disclose all marketing costs as part of a sales contract, a valuer undertaking a valuation on behalf of the purchaser's bank, will then discount the valuation by the disclosed cost of marketing the property.

2013 Corporate Partners



This will then leave the prospective purchaser with a contract price above the valuation of the house/land. In most situations, banks are unwilling to lend to prospective purchasers in situations where the property is valued at less than the contract price, particularly where the transaction involves a new residential property.

Prospective purchasers are then left with the option to terminate the contract, or in some instances, increase their deposit to cover the cost of the marketing, while still meeting the bank's lending requirements.

While the intentions of Sections 157 and 158 are supported, the Property Council is concerned the practical operation of these sections will have a negative impact on consumers, particularly where new residential products are being transacted.

## Appointment

Part 4 of the Bill, relating to a standard approved appointment form, is seen by the Property Council as a positive move to streamline and simplify the appointment process.

The Property Council has previously raised concerns regarding the need for standardised written pre-appointment advice to be provided to prevent potential litigation surrounding technical breaches.

## Conclusion

The Property Council supports the Government's commitment to the reduction of red tape, and sees the introduction of this Bill as a positive step towards reducing unnecessary regulation in Queensland.

If you have any further questions regarding the Property Council or this submission, please do not hesitate to contact me on 07 3225 3000 or [kmacdermott@propertyoz.com.au](mailto:kmacdermott@propertyoz.com.au).

Yours sincerely



**Kathy Mac Dermott**  
Executive Director

Enc. Property Council of Australia submission, *Splitting of the Property Agents and Motor Dealers Act 2000*.

11 March 2013



**Property Council of Australia**  
**Queensland Division**  
Level 3, 232 Adelaide Street,  
Brisbane QLD 4000

GPO Box 113  
Brisbane QLD 4001

P: +61 (7) 3225 3000  
F: +61 (7) 3229 9160  
ABN 13 008 474 422

E: [qld@propertyoz.com.au](mailto:qld@propertyoz.com.au)  
[www.propertyoz.com.au/qld](http://www.propertyoz.com.au/qld)

Red Tape Reduction Review of Agents Bills  
Office of Regulatory Policy  
GPO Box 3111  
Brisbane, Qld 4001

Dear Attorney-General

### **Splitting of the Property Agents and Motor Dealers Act 2000**

Thank you for the opportunity to provide feedback on the splitting of the Property Agents and Motor Dealers Act (PAMDA) and the subsequent draft Agents Bills 2013.

The Property Council is supportive of the move to separate the legislation regulating property agents from motor dealers, and provides the following comments on the draft Property Occupations Bill 2013 (Bill).

#### **Objects of the Act**

The objects of the Act are primarily to provide a licensing system for property agents and 'provide a way of protecting consumers against particular undesirable practices associated with the promotion of residential property'.

The second object relates directly to residential property, and it is therefore questionable why commercial property agents are subject to the same provisions.

Many commercial property transactions are multi-million dollar deals involving sophisticated vendors and buyers. They are mostly business to business transactions, with few involving consumers inexperienced in real estate.

There is little need for consumer protection provisions where it can be demonstrated that parties to a transaction are sophisticated and experienced in real estate transactions.

Subjecting commercial transactions to the provisions of the Act based on consumer protection is ill-founded, as many 'consumers' are multi-million dollar corporations.

#### **Exemptions**

A precedent has been set in legislation, including the Queensland *Retail Shop Leases Act*, whereby 'sophisticated consumers' are exempt from complying with consumer protection provisions of an Act.



**Property Council of Australia  
Queensland Division**  
Level 3, 232 Adelaide Street,  
Brisbane QLD 4000

GPO Box 113  
Brisbane QLD 4001

P: +61 (7) 3225 3000  
F: +61 (7) 3229 9160  
ABN 13 008 474 422

E: [qld@propertyoz.com.au](mailto:qld@propertyoz.com.au)  
[www.propertyoz.com.au/qld](http://www.propertyoz.com.au/qld)

## THE VOICE OF LEADERSHIP

Likewise, where transactions occur between related entities, there is little need for consumer protection. This has been recognized in other jurisdictions, and at a national level.

The Interim Occupational Licensing Advisory Committee set up to discuss the proposed national license for real estate agents, unanimously supported the exemption of related entities and sophisticated owners from the requirement for licensing.

As there is existing precedent within Queensland and nationally, it is logical that the draft Bill should exempt related entities and 'sophisticated consumers' who do not need, nor want, the protection of the legislation.

These exemptions will reduce the cost of compliance for companies and result in less regulation for the government to process.

The Shopping Centre Council of Australia estimates the cost of real estate regulation and licensing in Queensland to be around \$2.4 million per year.

### Warning statement

The Property Council supports the intention of Section 167 (2) in streamlining regulations regarding the pre-signing direction and warning statement of residential contracts.

The current wording of the legislation however would see the warning statement required in multiple locations throughout the document and on supporting pages.

The legislation states the warning must be '...written immediately above, and on the same page as, each place in the contract where the buyer signs...'

Buyers often initial every page of a contract (or at least alterations), so the current wording would indicate a warning statement is required on every page. This may also apply to supporting documentation, for example site plans, which buyers are required to initial.

To ensure the section meets its objective of simplifying residential contracts, further clarification is required.

It would be the Property Council's preference that the warning statement is only required above where the buyer signs on the execution page of the contract.

### Cooling off periods

Retention of cooling off provisions in standard residential contracts is supported by the Property Council. However, the current exemption to sale by auction should be extended to more sophisticated agreements, such as by tender or option, where cooling off periods should not apply.



Brisbane Airport Corporation



Property Council of Australia  
Queensland Division  
Level 3, 232 Adelaide Street,  
Brisbane QLD 4000

GPO Box 113  
Brisbane QLD 4001

P: +61 (7) 3225 3000  
F: +61 (7) 3229 9160  
ABN 13 008 474 422

E: [qld@propertyoz.com.au](mailto:qld@propertyoz.com.au)  
[www.propertyoz.com.au/qld](http://www.propertyoz.com.au/qld)

## THE VOICE OF LEADERSHIP

For example, a buyer could sign a contract by calling an option they have held for a significant period of time, and then exercise their right to terminate the contract during the subsequent 5 business day cooling off period.

Any party entering into a tender or option would be experienced in real estate transactions, and not need the 'consumer protection' provided by the cooling off period. This instead provides a legal technicality through which an agreement can be terminated.

The removal of cooling off periods for residential property purchased at auction has established a precedent through which cooling off periods should be removed for 'sophisticated' transactions.

This could also be extended to significant residential transactions, such as the sale of a large residential estate from one company to another.

There is a big difference between the purchaser of a single, vacant residential block of land, and the purchaser of a 100 lot residential sub-division. The legislation however, treats both consumers the same.

### Definitions

Section 15 (2) of the draft Bill provides a definition for residential property.

The current wording is ambiguous enough to capture commercial and retail lots in predominantly residential buildings, which is clearly not the intention of the Act.

Removing the words '...or in a residential area -...' would resolve this issue by limiting the definition to those residential properties the Act aims to cover.

Throughout the Act, the expression 'enters into' is repeatedly used. While technically correct, it too is ambiguous. Greater clarity could be provided by exchanging it for terms such as 'signs the contract documents'.

### Lands not lawfully useable for residential purposes

The draft Bill (section 96) provides that prospective purchasers must be given a written statement where vacant land is not lawfully useable for residential purposes.

While again aimed at protection of inexperienced consumers and residential purchasers, the current drafting of the legislation captures sophisticated property transactions.

Agents would be required to provide written notice to potential purchasers of industrial, commercial or retail land explaining they cannot build residential dwellings on it.

While intended to protect residential consumers, this adds extra regulation to property transaction for questionable gain. Particularly where agents are dealing with 'sophisticated consumers' this adds time and money to the transaction process.



Property Council of Australia  
Queensland Division  
Level 3, 232 Adelaide Street,  
Brisbane QLD 4000

GPO Box 113  
Brisbane QLD 4001

P: +61 (7) 3225 3000  
F: +61 (7) 3229 9160  
ABN 13 008 474 422

E: [qld@propertyoz.com.au](mailto:qld@propertyoz.com.au)  
[www.propertyoz.com.au/qld](http://www.propertyoz.com.au/qld)

## THE VOICE OF LEADERSHIP

Additionally, agents are rarely qualified town planners, so in most situations they would not be in a position to provide advice on town planning matters to a purchaser.

### Disclosure

Section 86 of the draft Bill outlines disclosure requirements for vendor's agents in the sale of residential properties.

While the intention of this section in protecting consumers from undesirable practices is supported, current reporting arrangements have the potential to impact on a range of broader issues, such as valuations.

For example, a residential developer may sell 10 new lots to a builder by way of an option, at a reduced rate for purchasing in bulk. That builder may then advertise house and land packages to potential purchasers. After identifying a purchaser, the builder may request the purchaser sign a contract on the land directly with the developer, and a building contract with them (the builder) for the house.

What this means, is the developer will be required to disclose the difference between the price the land was 'sold' to the builder and the final purchase price as a form of marketing cost. This has the potential to be a significant amount of money.

Often when providing a valuation on a property, valuers discount the amount of money spent on marketing from the final valuation. In the example above, this would mean the valuation would come in considerably below contract price, potentially meaning the purchaser will be unable to gain finance for the property.

### Issues specific to commercial property

There is a fundamental issue with the draft Bill and the previous PAMDA legislation, as they are primarily designed for the residential property sector. Many of the requirements placed on commercial property agents are a consequence of this, and add unnecessary regulation to the industry.

The commercial property sector typically undertakes transactions of high monetary value, between experienced vendors and buyers.

These transactions often involve property management agreements and accounting and auditing requirements that are beyond the scope of this residential-focused legislation.

As noted earlier, there is a need to include exemptions within the legislation for 'sophisticated consumers' (both residential and commercial) and 'related entities'.

The current legislation does not provide the flexibility required by agents when drafting agreements. While having regulations and standard forms in place for smaller transactions or inexperienced owners is essential, it should be optional for larger, more sophisticated transactions.



Property Council of Australia  
Queensland Division  
Level 3, 232 Adelaide Street,  
Brisbane QLD 4000

GPO Box 113  
Brisbane QLD 4001

P: +61 (7) 3225 3000  
F: +61 (7) 3229 9160  
ABN 13 008 474 422

E: [qld@propertyoz.com.au](mailto:qld@propertyoz.com.au)  
[www.propertyoz.com.au/qld](http://www.propertyoz.com.au/qld)

## THE VOICE OF LEADERSHIP

For example, many large commercial owners have drafted their own agreements which they use across jurisdictions. These multi-million dollar organisations do not need the protection of the legislation or the standard form agreements it dictates they must use.

Flexibility must be written into the draft Bill to allow such agreements to be accepted as common law, and to bring Queensland in line with other states.

Additionally, the current complex requirements for entering into a contract give rise to technical breaches being used to terminate commercial contracts. Permitting common law agreements would minimize the amount of litigation arising from technical breaches.

It is acknowledged that agents have a responsibility to inform their clients of the terms of their appointment, and disclose any interests they may have in a transaction.

Section 80 of the draft Bill provides that pre-appointment advice must be given prior to an appointment being signed.

As this section- and the previous section in PAMDA- does not require the advice to be provided in writing, this section has been used as a means of avoiding a contract based on a technical breach.

Where there is a requirement to provide specific information, the Property Council would like to see this as a standard form that must be initialed by the agent and the vendor, to minimize the potential for technical breach.

### Conclusion

The Property Council supports the Government's commitment to the reduction of red tape in Queensland, and sees the development of the draft Agents Bills 2013 as a key way of achieving this.

While this submission has raised some issues requiring further consideration, we would appreciate the opportunity to meet with your department to discuss the technical details of the Bill in greater detail. Please contact Jen Williams on 07 3225 3000 or [jwilliams@propertyoz.com.au](mailto:jwilliams@propertyoz.com.au) to organize a convenient time to meet.

If you have any further questions about the Property Council or this submission, please do not hesitate to contact us.

Yours sincerely



**Kathy Mac Dermott**  
Executive Director

17 January 2014

Research Director  
Legal Affairs and Community Safety Committee  
Parliament House  
George Street QLD 4000

By post and email: [lacsc@parliament.qld.gov.au](mailto:lacsc@parliament.qld.gov.au)

### Section 216(2) Property Occupations Bill 2013

The main purpose of this submission is to request a clarifying amendment to the prohibition in section 216(2) of the Property Occupations Bill 2013 (Qld) (Bill).

REA Group Limited (REA) operates the Australian market leading property advertising website realestate.com.au. It is unclear from the current terms of section 216(2) whether the prohibition is intended to restrict a real estate agent from providing a confidential notional price to property portals such as realestate.com.au for the purpose of operation of website search functionality. The amendment we request would make it clear that a real estate agent who only discloses a notional price to a property portal for search purposes would not be in breach of section 216(2), provided that the notional price is not published on the portal. We expand on the justifications for this submission on page 2.

We further submit that the section 216(2)(c) restriction on agents providing price guides will per se lead to inefficiencies in the Queensland property market and suboptimal outcomes for vendors, agents and buyers. Prospective buyers are increasingly time poor and need to know quickly whether a property is within their 'ballpark' price range. Our research reveals that prospective buyers are increasingly inclined to pass over a property where there is no indication of approximate price range. 66% of potential purchasers say that they will not pursue a property if a price is not displayed. Without any kind of price indication, vendors and their agents would miss out on a number of prospective buyers who might compete for the property and drive up the price. The leads that agents obtain are likely to be lower quality and 'qualified' leads will take more time to discover. It is a universally accepted economic principle that freedom of information is critical for the efficient operation of competitive markets.

We submit that agents should be able to provide a price guide if they consider that to be in the vendor's best interests, or at least be able to provide a price guide if their vendor instructs them to do so (consistent with the terms of section 216(3)). The choice to display a price guide is essential for vendors, particularly in low-mid price range properties where demand is generally stronger than the top-end and vendors may wish to distinguish their property by price. An unduly restrictive application of section 216(2) may force the agent to act contrary to their primary duties of agency – to act in their principal's best interests and in accordance with their instructions.

We note that even a broad application of section 216(2) would not restrict non-agent entities from providing price guidance eg corporate property data providers or portals themselves using historical data. It seems an

absurd result when the only parties who may not provide any kind of price guidance are licensed real estate agents, who are supposed to be the trusted experts in the property market.

### **Principal submission in relation to agents' disclosure to property portals**

#### *(i) The benefits of property portals to the Queensland property market*

The primary function of these property portals such as realestate.com.au is to aggregate the property listings of multiple real estate agents. Other major property portals in Queensland include Domain.com.au, REIQ.com.au and homehound.com.au. These property portals allow property buyers to quickly and efficiently view a large number of properties that satisfy their search preferences. A key search criterion is price range, along with location, property type, number of bedrooms and bathrooms. Property portals benefit agents and vendors by providing exposure to a much larger audience than would be possible through the agents' own websites. Property portals are now critical to the efficiency of residential and commercial property markets. Most consumer search for property is now conducted online and the majority of buyer enquiry for agents and vendors is via property portals.

#### *(ii) Search criteria on property portals*

The principal search criteria on realestate.com.au are location, property type, number of bedrooms and bathrooms and price range. Further refinements are possible - minimum land size, indoor and outdoor features, eco-friendly attributes and keyword searching. This search functionality matches buyers with specified property attribute preferences with a range of suitable properties matching those preferences. For agents it provides them with better qualified leads via enquiry made through the website and vendors maximise their chances of selling their property for the best price possible.

It should be noted that realestate.com.au does allow agents to suppress any indication of price or price range on the listing itself. The only mandatory requirement in relation to price is that a confidential notional price is provided so that search results can be ranked and grouped so that buyers with appropriate budgets may be matched with suitable properties.

#### *(iii) The intended scope of section 216(2)*

We consider the best interpretation of the current words of section 216(2) is that an agent's provision of confidential notional prices to the back-end of a portal is not within the intended scope of the prohibition. That notional price is highly unlikely to be the 'reserve price' under section 216(2)(a). Neither is it likely to be the amount the property agent considers is a price likely to result in a successful or acceptable bid for the offered property under section 216(2)(b). The agent sets the notional price to bracket the property within the searches of website users who have budgets in that range.

However, it is unclear whether the notional price is a 'price guide' for the property under section 216(2)(c). 'Price guide' is not defined and the following brief guidance in the explanatory notes to the Bill is unhelpful:

*“The Bill (clauses 214 and 216) clarifies that a price guide for a property to be sold by auction is not to be (sic) disclosed, whether in advertising, when asked by a potential bidder, or otherwise.”*

If anything, this guidance implies there is no change to the current law. As portals have been operating under their current process for many years, without query by any Regulator, our expectation is therefore that the current process of using confidential notional prices to filter search results remains outside the scope of the prohibition.

The explanatory notes summarises the prohibition in terms of “providing a price guide at auction”. That implies a narrow scope for ‘price guide’ beyond the existing prohibitions as set out in subsections 216(2)(a) and (b). For an agent to provide a portal with a confidential notional price for the purposes of the portals search operation can hardly be considered to be providing a price guide at auction. We note that the overall purpose of the reform is to “reduce regulation” which again implies a narrow intended definition of ‘price guide’ in section 216(2)(c). Furthermore, if an agent’s disclosure of a search price to portals was prohibited, it would mean that every Queensland auction property that fits a website user’s other (non-price) search criteria would be displayed in any price band they search. Prospective buyers would gain a misleading impression as to a property’s value. At the very least, prospective buyers are likely to waste time attending auctions for properties that are not suitable for their budgets. Agents similarly would need to deal with a higher proportion of low quality leads. We do not believe that the Queensland legislature could have intended this highly undesirable market outcome.

Whilst the above represents what we consider to be the best interpretation of section 216(2)(c), we acknowledge the situation is unclear. This stems from the use of the nebulous term ‘price guide’, without further definition.

We request that section 216(2) be clarified to confirm that a real estate agent who only discloses a notional price to a property portal for search purposes would not be in breach of section 216(2), provided that the notional price is not published on the portal. Alternatively we request confirmation that the current terms of section 216(2) are not intended to restrict this activity, as appears to be the best interpretation of the section. The final alternative we ask be considered is to make explicit that an agent may provide a price guide if they consider that to be in their vendor’s best interests, or at least be able to provide a price guide if their vendor instructs them to do so.

Please do not hesitate to contact me by email [paul.gordon@rea-group.com](mailto:paul.gordon@rea-group.com) or phone 0400 961 802 to discuss any aspect of this submission.

Yours sincerely,



pp Paul Gordon  
General Counsel, REA Group

17 January 2014

The Research Director  
Legal Affairs and Community Safety Committee  
Parliament House  
George Street  
BRISBANE QLD 4000

By Post & Email to: [lacsc@parliament.qld.gov.au](mailto:lacsc@parliament.qld.gov.au)

Dear Sir or Madam,

## PROPERTY OCCUPATIONS BILL 2013 – SUBMISSION

We refer to the *Property Occupations Bill 2013* ('**Bill**') issued by the Attorney-General and Minister for Justice, the Honourable Jarrod Bleijie MP, on 20<sup>th</sup> November, 2013 and the current review by the Legal Affairs and Community Safety Committee ('**Committee**') of the Bill.

RP Data is pleased to make this submission in response to the Committee's call for submissions on the Bill.

### 1. About RP Data

RP Data, created and originally headquartered in Brisbane, is the leading national provider of property data and analytics to over 75% of Australia's real estate agents and 90% of Australian financial institutions, supporting confident decision making and risk management with respect to Australia's residential and commercial property markets. RP Data holds Australia's largest and most comprehensive residential and commercial property database covering 97% of all properties in Australia and New Zealand, and monitors the performance of \$5.1 trillion of residential assets and \$0.8 trillion of commercial property assets. The RP Data Rismark index is Australia's benchmark daily and monthly residential property index used by all major banks and the Reserve Bank of Australia. It is also published on the ASX and Bloomberg networks.

RP Data also provides a range of reports targeted for consumer consumption at our consumer oriented website [www.myrp.com.au](http://www.myrp.com.au), and also through key strategic partners such as [www.realestate.com.au](http://www.realestate.com.au). These reports include a broad range of property, street and suburb reports designed to inform consumers about the property market in which they are looking to purchase and direct them to appropriate professionals in the relevant area, armed with the information they need to ask the right questions and seek the appropriate advice.

Further detailed information about RP Data can be found in *Appendix A*.

### 2. The Importance of Real Estate

Real estate, in particular residential real estate, underpins Australia's wealth position and economic strength. As at December 2013, residential real estate was valued at \$5.1 trillion and commercial real estate \$0.8 trillion, compared to the aggregate value of listed equities (\$1.5 trillion) and superannuation savings (\$1.6 trillion). Of the \$5.1 trillion aggregate value of residential property across Australia, we estimate 15% of this value (\$ 0.785 trillion) relates to residential property located in the State of Queensland.

Australia's banks currently have approximately 60 per cent of their assets in loans secured by residential property, with approximately 40 per cent of Australia's banks' total funding requirements met by offshore investors from the international capital markets. Given this, Australia cannot afford to implement regulation that undermines local and/or international confidence in the residential property market or which may have adverse unintended consequences on this important sector of the economy. Residential property underpins approximately 60% of Australian's wealth, as such the significance of real estate to Australia's continued economic prosperity cannot be overestimated.

The Bill, which impacts on the core group of professionals engaged to provide professional services in respect of this asset class, is therefore of the utmost importance in order to ensure the continued confidence and transparency in respect of this asset class.

### 3. RP Data's interest in the Bill

Real estate agents are one of RP Data's core customer segments. In Queensland, over 70% of real estate agents use our services. Across Australia, the extent to which real estate agents, financial institutions and mortgage brokers leverage and platforms can be demonstrated from the following statistics for the month of September 2013:

#### RP Data Property Information System - per day figures for September 2013

52,000:	Individual professional users logging in
14,000:	Comparative Market Analysis reports generated
9,000:	Listing reports generated: Property List, On The Market™ List and Recent Sales
2,200:	Automated Value Estimate Reports generated

Accordingly, RP Data has a keen interest in regulatory changes that impact on the real estate profession and the asset class generally.

### 4. General Support for the Bill

In general, RP Data supports the objectives the Bill sets out to achieve, in particular the repeal of the *Property Agents and Motor Dealers Act 2000* QLD ("**PAMDA**") and the creating of an industry specific piece of legislation focussing on the real estate profession.

In particular, we believe the Bill, when enacted, will prove successful in delivering the following positive outcomes:

- a. striking the appropriate balance between protecting consumers and encouraging freedom of enterprise in the market, unimpeded by unnecessary regulation that serves no clear purpose; and
- b. providing greater clarity and simplicity of applicable laws and market practices.

RP Data has also received positive feedback from key market participants in regards to the creation of this Bill.

### 5. Potential Areas for Improving the Bill

We believe that there are two main aspects of the Bill that could be enhanced and amended. These relate to the distribution of comparative market analysis reports ("**CMAs**") to sellers and potential buyers and the issue of the provision of price guides/estimations to potential buyers in respect of properties being sold by auction.

#### A) Mandatory CMAs to sellers

The Bill states, that under section 213(4) and 215, a real estate agent or auctioneer must give a comparative market analysis report to the vendor if they are to give information about the estimated price the property is likely to be sold at.

Section 213 (1) of the Bill provides that the section applies if a person wanting to sell residential property asks an auctioneer for information about the price at which the residential property...is likely to be sold if it is sold by auction. Similarly section 215 (1) provides that the section applies if the seller asks the real estate agent for information about the price at which residential property that is to be, may be, offered for sale, whether not by auction, is likely to be sold at.

Our issue with this part of the Bill is that the obligation on the agent to provide a CMA to the seller only applies if the seller asks a very specific and narrow question concerning the price at which the property is likely to be sold. If the seller doesn't ask such a question, it appears the Bill places no obligation on the agent or the auctioneer to provide a CMA.

The utilisation of CMAs is best practice and ought to be provided by an agent to a prospective seller prior to listing so as to enable the seller to determine and agree the appropriate listing strategy with the agent. Whilst we believe this to be the intent of the Bill, our concern is that the obligation on the agent to provide a CMA is conditional on the seller asking this specific question.

RP Data fully supports the initiative of supplying prospective sellers with a CMA prior to listing. We believe that by making them compulsory; regardless if the seller asks or not, will benefit the public and the industry generally and make the Bill consistent with the legislative position in other states (see *Appendix B*). **We therefore recommend the wording in these sections be clarified to ensure that CMAs are required to be given to sellers in all cases prior to the listing appointment being finalised.**

B) Allowing some form of price/property guide to potential buyers in auctions

We note the issue of the provision of price guides to prospective buyers has been one issue that has received some attention and debate in respect of the Bill. Our understanding is that agents in Queensland generally do not provide any form of price guide about the subject property to prospective buyers, limiting their disclosure to reports on comparable sales at a suburb or postcode level. This differs to the market practice in each of N.S.W and Victoria, where agents typically provide some form of price guide in respect of the subject property.

We conducted some analysis of auction sales in each of these two States for the period 1 October 2012 to 30 September 2013 in order to ascertain whether or not there were any material differences in terms of outcomes between the states. For each of the auction sales in the respective states during that period<sup>1</sup>, we compared the sale price with RP data's estimate of the subject property's market value at the sale date, derived from our automated valuation model ("AVM") and utilising only those AVM estimates we deemed reliable. The percentages in the table below demonstrate, by relevant price band, the extent to which the sales price exceeds our estimate of market value. For example, for all properties sold for less than \$500,000 in Queensland during this period, only 14.9% of homes were sold for a price we consider to be higher than the estimated market value of the property at that time, with the remaining 85.1% of properties sold at or below our estimated market value.

<sup>1</sup> The respective number of auction sales in the respective periods are as follows: Queensland 4372; NSW 13,200 and 12,992

State	Sale Price Band	HOUSE	UNIT
		Auction	Auction
QLD	1. < \$500k	14.9%	15.6%
	2. > \$500k and < \$1m	36.3%	33.3%
	3. > \$1m and < \$1.5m	40.1%	21.7% <sup>2</sup>
	4. > \$1.5m	43.3%	25.0% <sup>3</sup>
NSW	1. < \$500k	20.8%	28.5%
	2. > \$500k and < \$1m	46.1%	52.8%
	3. > \$1m and < \$1.5m	55.4%	55.1%
	4. > \$1.5m	55.7%	59.7%
VIC	1. < \$500k	30.8%	38.2%
	2. > \$500k and < \$1m	56.7%	60.1%
	3. > \$1m and < \$1.5m	61.7%	57.6%
	4. > \$1.5m	66.2%	44.4%

Whilst some caution must be placed on drawing too many firm conclusions from this high level analysis<sup>4</sup>, it certainly does not suggest that there currently exists any systemic issue in Queensland in terms of buyers purchasing property at auction for amounts materially in excess of market value.

In terms of the issue about disclosure of information to prospective auction buyers by agents and auctioneers, sections 214 and 216 of the Bill provide that a real estate agent or auctioneer is not to disclose the reserve or other price to any other person except for the person acting for the seller in relation to the sale. This includes the seller and potential buyers and means that the reserve price set for the property, the amount the agent or auctioneer thinks the place is likely to be sold at, or a price guide of any sort cannot be disclosed. Under sections 214(4) and 216(4), a CMA however may be given to others if written permission from the seller is given.

RP Data believes that a CMA may not be the best and most appropriate tool to provide to potential buyers. A CMA is created by the agent to specifically inform sellers of the estimated market value of their property for the purposes of determining the listing strategy of that property and includes some margin for negotiation/discounting. However, we believe this information is not something that should be given by the agent to potential buyers, who are not the client of the agent like the seller is, once appointed. A CMA report is a report constructed by an agent for a specific purpose (to provide advice and confirmatory evidence to support a listing strategy for the property) that is quite different

<sup>2</sup> Please note this is based on only 23 sales in the relevant period

<sup>3</sup> Please note this is based on only 8 sales in the relevant period

<sup>4</sup> Particularly for high value unit sales where minimal data points exist

to the purpose the report is likely to be utilised for by a prospective buyer (to determine the best strategy to purchase the property for the lowest possible price).

If agents envisage the CMA report provided to a seller may also be provided to prospective buyers, there is a real risk that agents will materially change the way in which they prepare CMA reports so that the report becomes generic and doesn't serve anyone interests or provide any meaningful analysis and/or advice. **Accordingly we recommend that provisions in the Bill that envisage CMAs being provided to prospective buyers be reviewed so as to ensure a CMA remains the primary form of instrument providing advice to prospective sellers at the time of listing a property for sale.**

Whilst there is an argument, as demonstrated in the table set out above, that the current auction process in Queensland isn't 'broken' and therefore doesn't need any regulatory intervention to change the current market dynamics, there is also a contrasting view that prospective buyers should be entitled to some level of information about a subject property being sold at auction from which they can determine whether or not to make further enquiries, rather than be forced to completely fend for themselves in determining the approximate market value and therefore likely sale price of an auction property.

We have also received feedback from one of our large franchise group customers that they believe a lack of available information to prospective buyers may deter prospective buyers from attending and/or participating in prospective auctions. Consequently, this may lead agents to advise against selling a property at auction.

We understand many agents in Queensland are reluctant to provide any form of price guide to prospective buyers, unlike the position in NSW and Victoria where agents typically provide informal price guidance to prospective buyers after appropriate discussions have been held with the seller. Based on our research of other relevant applicable State legislation, it appears no other State legislation imposes a similar prohibition on the provision of price guides to that proposed in the Bill, making Queensland's proposed legislation unique. Other States, such as Victoria and South Australia, do have rules in regards to what estimates an agent/auctioneer can make to prospective buyers, they nevertheless still allow some form of price estimation.

We believe that there is a solution that is more appropriate for potential buyers – an independent report called a Property Profile Report. This is a report compiled by RP Data (therefore it is independent to what real estate agents compile) and is generated based on data that we have collected. It is different to a CMA because it does not give a specific estimated market value. Rather, it provides an estimated market value range, together with an estimate and how confident we are in the estimate. The report makes a clear note that this is only a starting point, and for buyers to do their own research as well to supplement the estimate. It contains 6 examples of the following; sold properties, properties for sale and properties for rent. An example of a Property Profile Report can be found in Appendix C.

**We suggest that this type of report is a more appropriate form of disclosure to potential buyers at auctions than a CMA. If policymakers behind the Bill are supportive of the principle that agents ought to be permitted, with the consent of the seller, to provide some information to prospective buyers about the subject property going to auction, in preference to the current regime of limited disclosure about comparable properties and no disclosure about the subject property (other than in the form of a CMA (which for the reasons described above we believe is an inappropriate tool)), then we believe agents ought to be permitted to provide independent information to prospective buyers in the form of a Property Profiler Report.** This would only benefit the public, as potential buyers are given information about the property they are interested in, assisting them in making a decision if the property is right for them and worth spending their money on, rather than have to trawl through a myriad of real estate sites that often contain widely divergent, inconsistent and often difficult to interpret information.

## 6. Conclusion

RP Data hopes that this submission provides an insight into our view on the Bill, and what improvements we believe contribute to the betterment of the real estate industry in Queensland.

In summary:

- a. CMAs should be made compulsory and the Bill be amended to clarify this position;
- b. CMAs should not be, under any circumstance, provided by agents and auctioneers to prospective buyers as they contain advice from the agent to the seller about the prospective listing price; and
- c. If the Government forms that view that agents ought to be permitted to make some form of disclosure about the subject property going to auction to prospective buyers, then the Bill may need to be clarified to provide that nothing in the Bill prohibits agents from referring and providing independently sourced reports and information to prospective buyers, provided the seller has consented.

The Queensland Government has, over the past decade, been at the leading edge of reforms designed to protect consumers and support and enhance professional standards in the real estate industry in Queensland. An example of this is the Queensland Code Oversight Committee, currently chaired by Neil Lawson and comprising a consumer representative appointed by the Office of Fair Trading and an industry representative who has always been an executive of RP Data since the Committee's inception in 2010. We anticipate the Bill, when enacted, will continue to enhance professional standards in the industry and we hope these recommendations help further achieve that objective.

We would be happy to provide any additional information and data that may be helpful in considering our submission, and would be pleased to answer any questions.

Yours sincerely



**Craig Mackenzie**  
General Counsel  
RP Data Pty Ltd

## **Appendix A – About RP Data**

Since 1980, RP Data and its acquired businesses have been providing comprehensive information solutions to the Australian and New Zealand property industry. RP Data's clients include real estate agents, registered valuers, financial institutions, insurance companies, property investors, consumers and government departments and agencies (such as the ATO, Australian Valuation Office and the Reserve Bank). With our services, clients can obtain property information delivered in real time so they can make informed decisions in a highly competitive market.

RP Data is the leading national provider of property data and analytics to over 75% of Australia's real estate agents and 90% of Australian mortgage finance institutions, supporting confident decision making and risk management with respect to Australia's residential and commercial property markets.

RP Data holds Australia's largest and most comprehensive residential and commercial property database covering 97% of all properties in Australia and New Zealand, including monitoring the performance of \$4.4 trillion of residential assets and \$0.7 trillion of commercial property assets. The RP Data Rismark index is Australia's benchmark daily and monthly residential property index used by all major banks, the RBA and published on the ASX and Bloomberg networks.

RP Data has over 11,000 customers and 120,000 end users who rely upon our services to transact, manage and finance the \$5 trillion property assets class which accounts for 70 % of Australia's wealth. RP Data licenses property information from a number of sources, including from LPI and local councils. RP Data also collects and creates its own data and content.

RP Data is 100% owned by CoreLogic, a NYSE listed entity that is itself the leading financial, property and consumer information, analytics and services company in the United States. Through its expansive database comprising 200million property records, RP Data combines public, contributory and propriety data to develop decision-making analytics, coupled with its business services that bring insight and transparency to property markets.

Backed by 30 years of business service history, RP Data is the holder of the country's largest residential and commercial property database, providing an excellent platform to electronically value every single property in Australia on a weekly basis with an average of 30 million automated valuations being generated each month. Additionally RP Data platforms supervise 100,000 physical property inspections per month for the mortgage finance industry.

Used by thousands of corporations and consumers seeking property information, RP Data is proud to boast the Reserve Bank of Australia as one of our key customers along with many multi-national corporations, financial institutions, real estate professionals, developers, investors and more recently, the broader consumer market through our user-friendly consumer brand – myrpdata.com

## Appendix B – Summary of State/Territory legislation relating to CMAs

State	Advice to vendors on CMAs
ACT	<p><u>Agents Regulation 2003 –</u></p> <p><u>Schedule 8:</u> under 8.21, “On completion of the inspection required by section 8.20, an agent must prepare and give to the principal a sales inspection report for the property.”</p> <p>This must be signed by the agent, which includes the agent's estimate of the selling price (or price range) for the property before they can act in respect of the sale of a property.</p>
NSW	<p><u>Property, Stock And Business Agents Regulation 2003 - Schedule 2:</u> under Part 1 (2), “On completion of the inspection required by clause 1, an agent must prepare and give to the principal a sales inspection report for the property.”</p> <p>They must give it to the vendor, and this includes a few factors such as a description and condition of buildings, the agent's recommendation of best way to sell property and their estimation of the selling price (or range).</p>
NT	<p><u>Agents Licensing Act –</u></p> <p><u>Sect 65:</u> under (g), an agent who “fails to inform his principal that, in the opinion of the licensed agent, a price or other consideration that the principal is prepared to accept on the sale of any property may be less than the fair market value of the property” will be “guilty of a breach of the rules of conduct for agents.”</p>
SA	<p><u>Land And Business (Sale And Conveyancing) Act 1994 –</u></p> <p><u>Sect 24e:</u> under (1), “An agent who is authorised to sell land or a business on behalf of a person (the “vendor”) must...” (a) “arrange a formal written valuation of the land or business, at the agent's own expense, by a person authorised to carry on business as a land valuer under the <u>Land Valuers Act 1994</u>” and (b) furnish the vendor with a copy of the land valuer's valuation report.</p>
TAS	<p><u>Property Agents And Land Transactions Regulations 2006 - Schedule 2:</u> under 7 (e), a property agent “must inform the client if, in his or her opinion, the price the client is prepared to accept on the listing of property is less than the fair market value of that property”.</p>
VIC	<p><u>Estate Agents Act 1980 –</u></p> <p><u>Sect 47:</u> Under 47 (A), “Seller must be given estimated selling price” and “Before obtaining a person's signature to an engagement or appointment to sell any real estate on behalf of the person, an estate agent (or an agent's representative employed by the agent) must ensure that the engagement or appointment states the agent's (or representative's) estimate of the selling price of the real estate, and that the estimate complies with this section.”</p>
WA	<p><u>Real Estate and Business Agents Act 1978 –</u></p> <p><u>Section 101:</u> under Code of Conduct (2011), rule 11, there is a “Duty to advise of market price” and “An agent engaged to sell or purchase any real estate or business must advise his or her principal as to what the agent considers to be the current market price of that real estate business and, if requested, give reasons for that opinion.”</p>

***Appendix C – Example of a Property Profile Report***

# XYZ Lending

Your money. Your choice

## Investor's Report

Prepared for:	CustomerFN CustomerSN
Prepared by:	RequesterFN RequesterSN
Prepared on:	20 June 2013
Phone:	040911122331
Email:	test@home.com
UserLabel1:	UserValue1
UserLabel2:	UserValue2
UserLabel3:	UserValue3

1 Melon Street  
Mansfield QLD 4122

Variable  
Rate  
4.X%



## >> Property Description



### 1 Melon Street Mansfield, QLD, 4122



<b>Real Property</b>	L145 RP128172:PAR BULIMBA
<b>Property Type Name</b>	House
<b>Land Use Primary</b>	Single Unit Dwelling
<b>Land Use Secondary</b>	None
<b>LGA Name</b>	Brisbane - Belmont
<b>Lot Plan</b>	145/RP128172 MANSFIELD QLD
<b>Zone</b>	01
<b>Zone Description</b>	Residential A
<b>UCV</b>	\$315,000
<b>UCV Date</b>	30/06/2012
<b>Age</b>	-
<b>Owner Name</b>	JASEY CHIA-HSU FANG, CHIA-CHEN WU
<b>Floor Area</b>	-
<b>Map Ref</b>	UBD QLD: BNE181, L16
<b>Last Sale</b>	\$410,000 on 25/06/2007
<b>Sale Type</b>	Normal Sale

## >> RP Estimate

**Estimated Price Range:** \$440,000 - \$550,000

High Confidence

This estimate is provided by RP Data, and is based on statistical market data such as recent local sales, property size, number of bedrooms and many more factors. It is not an appraisal and comes from public data, which may be incomplete or inaccurate.

#### How to read this estimate

The estimate has been broken into three confidence level categories based on the criteria listed below.

- High confidence is typically caused by a low degree of variability between the subject and comparable properties and/or high availability of comparable property data in the area
- Medium confidence is typically caused by a medium degree of variability between the subject and comparable properties and/or medium availability of comparable property data in the area
- Low confidence is typically caused by a high degree of variability between the subject and comparable properties and/or low availability of comparable property data in the area

#### Doing your research

This estimate is a starting point only. To determine the property's value we recommend you supplement this estimate by doing other research to take into account a property's special features and current market conditions. You may want to consider:

- the current sale price
- last sale price / date
- recent sales in the area
- visiting the house (where possible)
- contacting an agent for a price guide on this property or similar ones in the area
- requesting a valuation from a licensed valuer

## >> Property Imagery



Apr 09

April 2009

www.rpdata.com



Apr 09

April 2009

www.rpdata.com



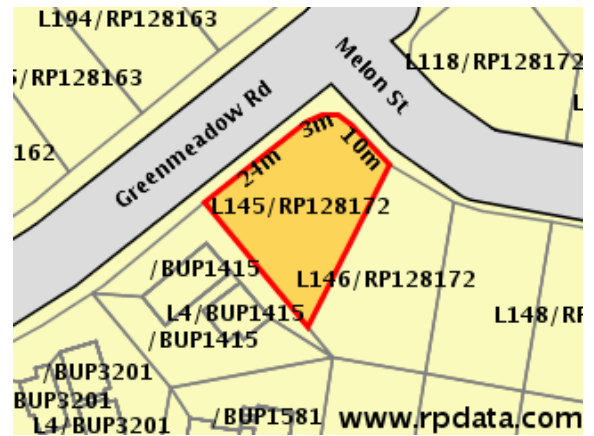
Apr 09

April 2009

www.rpdata.com



www.rpdata.com



## >> Sales History

<b>Sale Price:</b>	\$410,000	<b>Listing Price:</b>	-
<b>Days Listed:</b>	46	<b>Sale Date:</b>	25/06/2007
<b>Price Variation At Sale:</b>	2%	<b>Sale Type:</b>	Normal Sale
<b>Date First Advertised:</b>	16/05/2007	<b>Agency:</b>	No Agency Listed
<b>First Listing Price:</b>	\$435,000	<b>Agent:</b>	-
<b>Latest Listing Price:</b>	\$399,000	<b>Vendor Name:</b>	Dorothy May Driscoll-Gray
<b>Listing Price Variation:</b>	-8%	<b>Sale Advised by:</b>	Government

<b>Sale Price:</b>	\$312,500	<b>Listing Price:</b>	-
<b>Days Listed:</b>	15	<b>Sale Date:</b>	30/11/2005
<b>Price Variation At Sale:</b>	-1%	<b>Sale Type:</b>	Normal Sale
<b>Date First Advertised:</b>	26/11/2005	<b>Agency:</b>	No Agency Listed
<b>First Listing Price:</b>	\$318,000	<b>Agent:</b>	-
<b>Latest Listing Price:</b>	\$318,000	<b>Vendor Name:</b>	Daniel Robert Fortunasco
<b>Listing Price Variation:</b>	-	<b>Sale Advised by:</b>	Government

<b>Sale Price:</b>	\$122,000	<b>Listing Price:</b>	-
<b>Days Listed:</b>	-	<b>Sale Date:</b>	06/03/1992
<b>Price Variation At Sale:</b>	-	<b>Sale Type:</b>	Normal Sale
<b>Date First Advertised:</b>	-	<b>Agency:</b>	No Agency Listed
<b>First Listing Price:</b>	-	<b>Agent:</b>	-
<b>Latest Listing Price:</b>	-	<b>Vendor Name:</b>	To Muoi Troung, Antonio Cheang
<b>Listing Price Variation:</b>	-	<b>Sale Advised by:</b>	Government

<b>Sale Price:</b>	\$52,000	<b>Listing Price:</b>	-
<b>Days Listed:</b>	-	<b>Sale Date:</b>	01/05/1981
<b>Price Variation At Sale:</b>	-	<b>Sale Type:</b>	Normal Sale
<b>Date First Advertised:</b>	-	<b>Agency:</b>	No Agency Listed
<b>First Listing Price:</b>	-	<b>Agent:</b>	-
<b>Latest Listing Price:</b>	-	<b>Vendor Name:</b>	-
<b>Listing Price Variation:</b>	-	<b>Sale Advised by:</b>	Government

## >> Listing History

<b>Date First Advertised:</b>	19/11/2010	<b>Listing Price:</b>	12345
<b>Initial Listing Price:</b>	-	<b>Date Last Advertised:</b>	19/11/2010
<b>Latest Listing Price:</b>	-	<b>Listing Type:</b>	Normal Sale
<b>Days On Market:</b>	1	<b>Agency:</b>	Antonina Rose
<b>Listing Price Variation:</b>	-	<b>Agent:</b>	Antonina Rose
<b>Price Variation At Sale:</b>			

<b>Date First Advertised:</b>	16/05/2007	<b>Listing Price:</b>	-
<b>Initial Listing Price:</b>	\$435,000	<b>Date Last Advertised:</b>	30/06/2007
<b>Latest Listing Price:</b>	\$399,000	<b>Listing Type:</b>	Normal Sale
<b>Days On Market:</b>	46	<b>Agency:</b>	No Agency Listed
<b>Listing Price Variation:</b>	-8%	<b>Agent:</b>	Matt Martin
<b>Price Variation At Sale:</b>			

<b>Date First Advertised:</b>	26/11/2005	<b>Listing Price:</b>	-
<b>Initial Listing Price:</b>	\$318,000	<b>Date Last Advertised:</b>	10/12/2005
<b>Latest Listing Price:</b>	\$318,000	<b>Listing Type:</b>	Normal Sale
<b>Days On Market:</b>	15	<b>Agency:</b>	No Agency Listed
<b>Listing Price Variation:</b>	-	<b>Agent:</b>	Matt Martin
<b>Price Variation At Sale:</b>			

---

## >> OTM History - For Rent


<b>Date First Advertised:</b>	10/04/2009	<b>Listing Price:</b>	\$420/W
<b>Initial Listing Price:</b>	\$420	<b>Date Last Advertised:</b>	15/04/2009
<b>Latest Listing Price:</b>	\$420	<b>Days Listed:</b>	5
<b>Agency:</b>	Rental Express - Brisbane	<b>Agent:</b>	Sandra Cotterell

## >> Sold Properties



### 578 Creek Road Mount Gravatt East, QLD, 4122

Sale Price: \$489,000

  
4

  
2

  
2

  
800m<sup>2</sup>

<b>Lot/Plan:</b>	5/RP222620 MOUNT GRAVATT EAST QLD	<b>Sale Date:</b>	16/02/2013
<b>First Listed Date:</b>	14/02/2013	<b>Attributes:</b>	4 Beds, 2 Baths, 2 Car Spaces, 2 Lock Up Garages, 1 Ensuites
<b>Days on Market:</b>	1	<b>Agency:</b>	Ray White - Mt Gravatt
<b>Listing Price:</b>	\$489,000	<b>First Listed Price:</b>	\$489,000
<b>Agent:</b>	Rod Sorensen	<b>Last Listed Price:</b>	\$489,000
<b>Map Ref:</b>	UBD QLD: BNE181, K18	<b>Listing Price Variation:</b>	-
<b>Price Variation At Sale:</b>	-	<b>Sale Advised by:</b>	Government



### 6 Buttercup Street Mansfield, QLD, 4122

Sale Price: \$446,000

  
3

  
1

  
0

  
686m<sup>2</sup>

<b>Lot/Plan:</b>	71/RP139390 MANSFIELD QLD	<b>Sale Date:</b>	03/02/2013
<b>First Listed Date:</b>	02/01/2013	<b>Attributes:</b>	3 Beds, 1 Baths
<b>Days on Market:</b>	32	<b>Agency:</b>	L J Hooker Mount Gravatt
<b>Listing Price:</b>	OFFERS OVER \$427,500	<b>First Listed Price:</b>	-
<b>Agent:</b>	Wayne Morgan	<b>Last Listed Price:</b>	\$427,500
<b>Map Ref:</b>	UBD QLD: BNE181, L16	<b>Listing Price Variation:</b>	-
<b>Price Variation At Sale:</b>	4%	<b>Sale Advised by:</b>	Government



### 114 Tristania Way Mount Gravatt East, QLD, 4122

Sale Price: \$521,000



<b>Lot/Plan:</b>	14/SP171616 MOUNT GRAVATT EAST QLD	<b>Sale Date:</b>	08/01/2013
<b>First Listed Date:</b>	24/05/2008	<b>Attributes:</b>	4 Beds, 2 Baths, 2 Car Spaces, 2 Lock Up Garages, 1 Ensuites
<b>Days on Market:</b>	1702	<b>Agency:</b>	Brad Bell Real Estate
<b>Listing Price:</b>	\$549,000	<b>First Listed Price:</b>	\$570,000
<b>Agent:</b>	James Bell	<b>Last Listed Price:</b>	\$549,000
<b>Map Ref:</b>	UBD QLD: BNE181, J14	<b>Listing Price Variation:</b>	-3%
<b>Price Variation At Sale:</b>	-5%	<b>Sale Advised by:</b>	Government



### 2 Bluebell Street Mansfield, QLD, 4122

Sale Price: \$555,000



<b>Lot/Plan:</b>	336/RP136083 MANSFIELD QLD	<b>Sale Date:</b>	09/10/2012
<b>First Listed Date:</b>	-	<b>Attributes:</b>	4 Beds, 3 Baths, 1 Car Spaces, 2 Lock Up Garages, 1 Ensuites
<b>Days on Market:</b>	-	<b>Agency:</b>	-
<b>Listing Price:</b>	-	<b>First Listed Price:</b>	-
<b>Agent:</b>	-	<b>Last Listed Price:</b>	-
<b>Map Ref:</b>	UBD QLD: BNE181, L15	<b>Listing Price Variation:</b>	-
<b>Price Variation At Sale:</b>	-	<b>Sale Advised by:</b>	Government



### 6 Bread Street Mansfield, QLD, 4122

Sale Price: \$440,000



<b>Lot/Plan:</b>	342/RP133291 MANSFIELD QLD	<b>Sale Date:</b>	28/09/2012
<b>First Listed Date:</b>	-	<b>Attributes:</b>	3 Beds, 2 Baths, 1 Car Spaces, 1 Lock Up Garages
<b>Days on Market:</b>	-	<b>Agency:</b>	-
<b>Listing Price:</b>	-	<b>First Listed Price:</b>	-
<b>Agent:</b>	-	<b>Last Listed Price:</b>	-
<b>Map Ref:</b>	UBD QLD: BNE181, L14	<b>Listing Price Variation:</b>	-
<b>Price Variation At Sale:</b>	-	<b>Sale Advised by:</b>	Government




## 2 Redleaf Street Mansfield, QLD, 4122

Sale Price: \$459,000




<b>Lot/Plan:</b>	44/RP139390 MANSFIELD QLD	<b>Sale Date:</b>	04/08/2012
<b>First Listed Date:</b>	11/05/2012	<b>Attributes:</b>	3 Beds, 2 Baths, 2 Car Spaces, 2 Lock Up Garages, 1 Ensuites
<b>Days on Market:</b>	132	<b>Agency:</b>	Re/Max United Vision Carina
<b>Listing Price:</b>	HIGH \$400,000'S (UNDER OFFER)	<b>First Listed Price:</b>	-
<b>Agent:</b>	Susan Milward	<b>Last Listed Price:</b>	-
<b>Map Ref:</b>	UBD QLD: BNE181, M16	<b>Listing Price Variation:</b>	-
<b>Price Variation At Sale:</b>	-	<b>Sale Advised by:</b>	Government

## >> Listings




### 4 Fortescue Court Mount Gravatt East, QLD, 4122


Listed Price: HIGH \$600,000 BUYERS




5



3



2



478m<sup>2</sup>

<b>Lot/Plan:</b>	11/SP184310 MOUNT GRAVATT EAST QLD	<b>Last Listed Date:</b>	08/06/2013
<b>First Listed Date:</b>	08/06/2013	<b>Attributes:</b>	5 Beds, 3 Baths, 2 Car Spaces, 2 Lock Up Garages, 1 Ensuites
<b>Days on Market:</b>	1	<b>Agency:</b>	Re/Max Executives
<b>First Listed Price:</b>	-	<b>Agent:</b>	Peter Secco
<b>Listing Price Variation:</b>	-		



### 8 Raintree Street Mansfield, QLD, 4122

Listed Price: \$529,000 (UNDER OFFER)



3



2




2




574m<sup>2</sup>

<b>Lot/Plan:</b>	154/RP128172 MANSFIELD QLD	<b>Last Listed Date:</b>	05/06/2013
<b>First Listed Date:</b>	19/02/2013	<b>Attributes:</b>	3 Beds, 2 Baths, 2 Car Spaces, 2 Lock Up Garages
<b>Days on Market:</b>	107	<b>Agency:</b>	Kevin Manning Real Estate
<b>First Listed Price:</b>	\$529,000	<b>Agent:</b>	Kevin Manning
<b>Listing Price Variation:</b>	-		




### 7 Tick Street Mount Gravatt East, QLD, 4122


Listed Price: \$575,000




4



2



2



628m<sup>2</sup>

<b>Lot/Plan:</b>	4/RP869247 MOUNT GRAVATT EAST QLD	<b>Last Listed Date:</b>	08/05/2013
<b>First Listed Date:</b>	16/01/2013	<b>Attributes:</b>	4 Beds, 2 Baths, 2 Car Spaces, 2 Lock Up Garages, 1 Ensuites
<b>Days on Market:</b>	113	<b>Agency:</b>	Lj Hooker Mount Gravatt
<b>First Listed Price:</b>	\$630,000	<b>Agent:</b>	Wayne Morgan
<b>Listing Price Variation:</b>	-8%		



### 47 Raintree Street Mansfield, QLD, 4122

Listed Price: 409000



<b>Lot/Plan:</b>	19/RP139390 MANSFIELD QLD	<b>Last Listed Date:</b>	12/01/2013
<b>First Listed Date:</b>	19/12/2011	<b>Attributes:</b>	3 Beds, 1 Baths, 2 Car Spaces, 2 Lock Up Garages
<b>Days on Market:</b>	391	<b>Agency:</b>	Julies Realty
<b>First Listed Price:</b>	\$429,000	<b>Agent:</b>	Julie Huynh
<b>Listing Price Variation:</b>	-4%		



### 26 Bluebell Street Mansfield, QLD, 4122

Listed Price: OFFERS OVER \$545,000



<b>Lot/Plan:</b>	361/RP136084 MANSFIELD QLD	<b>Last Listed Date:</b>	12/01/2013
<b>First Listed Date:</b>	24/09/2012	<b>Attributes:</b>	4 Beds, 2 Baths, 2 Car Spaces, 2 Lock Up Garages, 1 Ensuites
<b>Days on Market:</b>	111	<b>Agency:</b>	Kevin Manning Real Estate
<b>First Listed Price:</b>	\$579,000	<b>Agent:</b>	Kevin Manning
<b>Listing Price Variation:</b>	-5%		




### 48 Greenmeadow Road Mansfield, QLD, 4122

Listed Price: Not Disclosed




<b>Lot/Plan:</b>	305/RP131627 MANSFIELD QLD	<b>Last Listed Date:</b>	09/01/2013
<b>First Listed Date:</b>	17/10/2012	<b>Attributes:</b>	3 Beds, 2 Baths, 2 Car Spaces, 2 Lock Up Garages
<b>Days on Market:</b>	85	<b>Agency:</b>	W J Tobin & Co Real Estate Carina
<b>First Listed Price:</b>	\$560,000	<b>Agent:</b>	Patrina Watson
<b>Listing Price Variation:</b>	-5%		


## >> Properties For Rent





### 29 Raintree Street Mansfield, QLD, 4122

Listed Price: -


  
3

  
1

  
1


  
556m2


<b>Lot/Plan:</b>	10/RP128172 MANSFIELD QLD	<b>Last Listed Date:</b>	08/06/2013
<b>First Listed Date:</b>	15/05/2013	<b>Attributes:</b>	3 Beds, 1 Baths, 1 Car Spaces, 1 Lock Up Garages
<b>Days on Market:</b>	25	<b>Agency:</b>	Lj Hooker - Brisbane Central
<b>First Listed Price:</b>	-	<b>Agent:</b>	Sue Asquith 3236 3644
<b>Listing Price Variation:</b>	-		





### 2 Privet Place Mansfield, QLD, 4122

Listed Price: \$410/W


  
3

  
1

  
0


  
647m2


<b>Lot/Plan:</b>	193/RP128163 MANSFIELD QLD	<b>Last Listed Date:</b>	08/06/2013
<b>First Listed Date:</b>	01/05/2013	<b>Attributes:</b>	3 Beds, 1 Baths, 1 Lock Up Garages
<b>Days on Market:</b>	39	<b>Agency:</b>	Julie Hardeman Real Estate - Annerley
<b>First Listed Price:</b>	\$425	<b>Agent:</b>	Julie Hardeman Real Estate
<b>Listing Price Variation:</b>	-3%		





### 14 Greenmeadow Road Mansfield, QLD, 4122

Listed Price: \$390/W

  
3

  
1

  
1

  
589m2

<b>Lot/Plan:</b>	194/RP128163 MANSFIELD QLD	<b>Last Listed Date:</b>	25/01/2013
<b>First Listed Date:</b>	06/01/2013	<b>Attributes:</b>	3 Beds, 1 Baths, 1 Car Spaces, 1 Lock Up Garages
<b>Days on Market:</b>	20	<b>Agency:</b>	Ray White - Mt Gravatt
<b>First Listed Price:</b>	\$390	<b>Agent:</b>	Andrew Boman
<b>Listing Price Variation:</b>	-		



### 3 Privet Place Mansfield, QLD, 4122

Listed Price: \$400/W



<b>Lot/Plan:</b>	187/RP128163 MANSFIELD QLD	<b>Last Listed Date:</b>	21/01/2013
<b>First Listed Date:</b>	18/01/2013	<b>Attributes:</b>	3 Beds, 1 Baths
<b>Days on Market:</b>	4	<b>Agency:</b>	Raine And Horne Upper Mt Gravatt
<b>First Listed Price:</b>	\$400	<b>Agent:</b>	Rentals Upper Mt Gravatt
<b>Listing Price Variation:</b>	-		



### 3 Tick Street Mount Gravatt East, QLD, 4122

Listed Price: \$540/W



<b>Lot/Plan:</b>	2/RP869247 MOUNT GRAVATT EAST QLD	<b>Last Listed Date:</b>	19/01/2013
<b>First Listed Date:</b>	30/11/2012	<b>Attributes:</b>	4 Beds, 3 Baths, 2 Car Spaces, 2 Lock Up Garages
<b>Days on Market:</b>	51	<b>Agency:</b>	Ray White - Mt Gravatt
<b>First Listed Price:</b>	\$540	<b>Agent:</b>	Andrew Boman
<b>Listing Price Variation:</b>	-		



### 116 Tristania Way Mount Gravatt East, QLD, 4122

Listed Price: -



<b>Lot/Plan:</b>	15/SP171616 MOUNT GRAVATT EAST QLD	<b>Last Listed Date:</b>	17/01/2013
<b>First Listed Date:</b>	10/10/2012	<b>Attributes:</b>	3 Beds, 1 Baths, 2 Lock Up Garages, 1 Ensuites
<b>Days on Market:</b>	100	<b>Agency:</b>	L J Hooker Mount Gravatt
<b>First Listed Price:</b>	\$570	<b>Agent:</b>	L.J. Hooker Mount Gravatt
<b>Listing Price Variation:</b>	-		

## >> MANSFIELD SUBURB STATISTICS

### Mansfield - Median Price

Period	Median Price for Houses	Median Price for Units
2012	\$473,500	\$349,500
2011	\$479,100	\$339,000
2010	\$509,000	\$380,000
2009	\$470,000	\$365,750
2008	\$454,750	\$339,000

### Mansfield - Past Sales - Houses

2013	2012	2011	2010	2009	2008	2007	2006	2005	2004
18	89	85	116	115	106	160	145	128	133

### Mansfield - Past Sales - Units

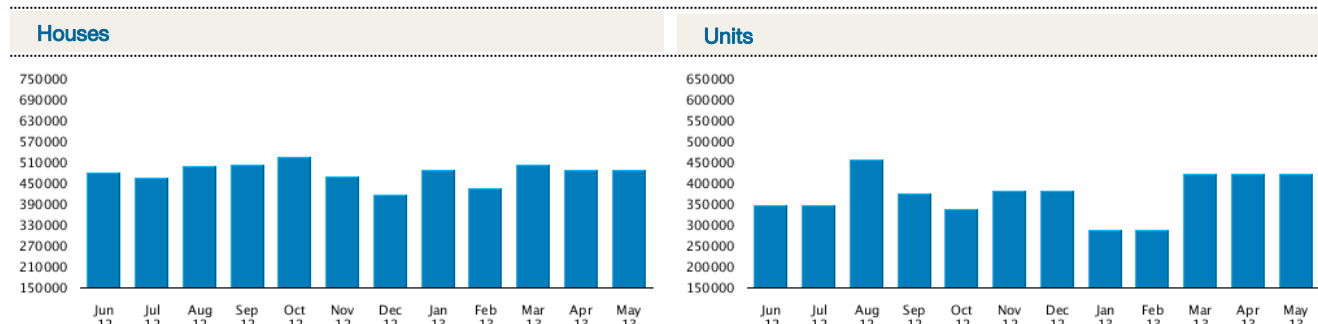
2013	2012	2011	2010	2009	2008	2007	2006	2005	2004
6	14	18	15	20	21	25	30	34	36

### Mansfield - Capital Growth

Period	Capital Growth % Houses	Capital Growth % Units
2012	-1.2%	3.1%
2011	-5.9%	-10.8%
2010	8.3%	3.9%
2009	3.4%	7.9%

\*S N R = Due to low volumes the rates would be statistically not reliable

### Recent Median Sale Prices



## >> LEGAL

Disclaimer here. Disclaimer here. Disclaimer here. Disclaimer here. Disclaimer here. Disclaimer here. Disclaimer here.

### RP Data Disclaimer

In compiling this publication, RP Data has relied upon information supplied by a number of external sources. The publication is supplied on the basis that while the RP Data believes all the information in it is deemed reliable at the time of publication, it does not warrant its accuracy or completeness and to the full extent allowed by law excludes liability in contract, tort or otherwise, for any loss or damage sustained by subscribers, or by any other person or body corporate arising from or in connection with the supply or use of the whole or any part of the information in this publication through any cause whatsoever and limits any liability it may have to the amount paid to RP Data for the supply of such information.

© 2013 Copyright RP Data Pty Ltd, Local, State, and Commonwealth Governments. All rights reserved. No reproduction, distribution, publication or transmission of the copyrighted materials in this RP Estimate or at this site is permitted.

RP Estimate is an Automated Valuation Model ('AVM'). This RP Estimate is computer generated and is not a professional appraisal. This RP Estimate should not be used in lieu of a professional appraisal under any circumstances. This RP Estimate depends on information relating to the subject property and other properties which may be incomplete or wrong, negatively impacting the accuracy of this RP Estimate. This RP Estimate is based on one or more statistical models and assumptions, which may not capture all relevant factors or features of the subject property. This RP Estimate also does not take into account the potential impact of external factors (such as a change in the economy, future planned infrastructure or environmental contamination on the subject property), which may affect the value of the subject property. Accordingly, this RP Estimate should not be relied upon by you or any other person, including when making any decision in connection with this or any other property.

The listing prices shown represent the first and last listing price RP Data recorded in the advertising campaign for the property. In some instances we may have derived the price from the advertisement text. Where we have been unable to derive the price from the advertisement text (for example "Auctions"), the discounting calculations are unavailable.

### State Government Copyright Notice and Disclaimer

QLD - Based on or contains data provided by the State of Queensland (Department of Environment and Resource Management) 2013. In consideration of the State permitting use of this data you acknowledge and agree that the State gives no warranty in relation to the data (including accuracy, reliability, completeness, currency or suitability) and accepts no liability (including without limitation, liability in negligence) for any loss, damage or costs (including consequential damage) relating to any use of the data. Data must not be used for direct marketing or be used in breach of the privacy laws.

### Publisher

RP Data Pty Limited  
ABN 67 087 759 171  
P: 1300 734 318  
E: support@rpdata.com



# Property Training Qld

*Your pathway to success in Real Estate*

P O Box 472, Eumundi QLD 4562

Phone - 07 5442 8640 Fax - 07 5442 8631

Email [info@propertytraining.com.au](mailto:info@propertytraining.com.au)

Property Occupation Bill 2013  
Submission 015

January 17, 2014

The Research Director  
Legal Affairs and Community Safety Committee  
Parliament House  
George Street  
BRISBANE QLD 4000

Dear Sir

I wish to make a submission to the committee with respect to the Property Occupations Bill 2013.

I forwarded a submission to the Office of Fair Trading when the proposed bill was being formulated.

I have attached a copy of my submission to this submission to the committee. The purpose of this is to background my submission to the committee and to draw attention to some relevant sections in my original submission that have not been incorporated in the Bill before the house.

The Bill before the house goes a long way towards modernizing the legislative requirements of the Property Industry. I believe however, that the Bill fails to recognize the significant specialized occupations that have evolved over years.

I will detail these in my brief submission attached. I would welcome an opportunity to address the committee if it was considered appropriate.

Yours sincerely

Paul A Lupi  
Chief Executive Officer



PROPERTY OCCUPATIONS BILL 2013  
SUBMISSION TO LEGAL AFFAIRS and COMMUNITY SAFETY COMMITTEE  
BY  
PAUL LUPI CEO PROPERTY TRAINING QLD

I refer the committee to my original submission to the Office of Fair Trading. In particular I wish to draw attention to the fact that the Bill continues to advocate a generic licence for Real Estate Agents.

Modern society has seen a growth in residential rentals to the extent that agencies that specialise in residential property rentals only have eventuated. Under the current legislation and in the Bill there is no licensing category for Residential Leasing Agents or their employees. There is no provision for Business Brokers or their employees.

The Bill has a provision for the Chief Executive Officer to issue specific restricted licences as his/her discretion. I firmly believe that it would be better if categories were legislatively defined so as to avoid confusion.

In particular I refer the committee to the following sections from my original submission.

Pages 5 to 11.

# **Submission to the Property Occupations Act**

## ***Introduction***

This submission has been prepared by Paul Lupi, CEO of Property Training Qld. I am a licensed real estate agent and a licensed auctioneer in Queensland. I have been licenced since 1988. Since 2003 I have operated a Registered Training Organisation specialising in licensing training for the real estate industry in Queensland.

## ***Overview***

In this submission I propose to address all aspects of property occupations in Queensland and any associated legislation that may accompany the Property Occupations Act.

I am fully aware that it is the intention of the Queensland government to minimise, as much as possible, red tape in legislation in this state. It is my intention to detail in this submission all of the property occupations as I see them and detail where red tape may be causing confusion and problems for this industry and to make recommendations as to a structure that would better meet the requirement for effective and simplified regulation of a complex and specialised industry.

## ***The Present***

The Property Agents and Motor Dealers Act 2000 replaced the previous Auctioneers and Agents Act. Throughout the years, occupations in the real estate industry have evolved into specialised fields. Previous Acts and the current Act have failed to recognise the specialisation and very different occupational fields within this industry.

## ***Property Licences***

### **Real estate agent**

A real estate agent's licence, sometimes called the full licence is the generic licence that applies to all aspects of occupation within the property industry in Queensland. Employees of real estate agents are registered salespeople. If they have a real estate agent's licence they are referred to as an employed real estate agent.

### **Resident Letting Agent**

A resident letting agent licence is a licence required to operate a letting business within a community title complex. It is a restriction on this licence that licensees live on the

# Submission to the Property Occupations Act

premises. There is limited provision for an employee of a resident letting agent to obtain any form of registration or licence due to the live on premises restriction.

## Restricted Real Estate Agent Licence

This is a generic form of licence which allows the chief executive to apply, as he deems fit, restrictions to the licence.

The previous government at no time allowed sufficient funding within departmental budgets for there to be a major overhaul of the current Act despite the fact that it is struggling to keep pace with the various property occupations and property trends occurring in this state. Regrettably, the consultation process between the Department and major stakeholders was minimal. In determining the educational qualifications required for the respective licensors the department appeared to look at qualification *titles* rather than qualification *content*. Consultation with the training providers in the industry would have served to assist in formulating better choices of units of competency for the various licences.

In this submission I will detail the various occupations as I see them. I will suggest training qualifications that may or may not be required for the various occupations and I will suggest the type of restrictions that could be imposed on restricted licences.

## Occupations

### Real Estate Agent

A real estate agent is a person or a corporation who alone or with others can transact all forms of property sales and leasing in all areas of property. They can list and sell or lease residential property, rural property, businesses, industrial property and commercial property. They can operate management rights. They can employ salespersons.

To qualify for a real estate agent licence an applicant must currently complete 19 specified units from the CPP 07 training package. Within these 19 units there are no units that cover specifically aspects of business broking commercial and industrial sales and leasing. Under the present legislation a person wishing to conduct the business of residential property management only, commercial and industrial leasing only or all business broking only are required to complete these 19 units and apply for a real estate agents licence.

## **Submission to the Property Occupations Act**

Current trends in residential housing have seen owners progress from large single blocks of land on which a single residential dwelling was situated to smaller land parcels, unit living and gated communities. There is also a trend away from owning your own home to renting your own home and having a different lifestyle due to having more disposable income. In the past 10 years there has been a proliferation of property management only agencies in Queensland to cater for this trend.

To operate these agencies the principal must have a real estate agent's licence and all of the employees of that principal must have a salesperson's registration certificate. In the 19 units required for such a licence only 4 are specifically related to property sales. This may be regarded as a form of red tape.

With the evolution of offices that deal with property management only, there has been an increase in the number of offices that deal in residential real estate sales only. To obtain a licence in such an office that principal must complete the above-mentioned 19 units of which only 6 are Property Management specific. Further red tape is evidenced here.

A resident leasing agent who desires to live off the complex site, or who owns management rights that have not incorporated an on-site manager's residence within the complex, must also obtain a real estate agents licence. Again 19 units of competency are required, of which a percentage are property sales specific.

### **Salesperson**

Any person who works for a real estate agent and who performs real estate activities must be a registered salesperson. To obtain salesperson's registration, the applicant must complete seven units of competency from the above-mentioned training package. Three of these units are sales specific, one is Property Management specific and the remaining three cover real estate in general.

It is particularly frustrating for persons who wish to work for offices that deal in solely Property Management to have to complete the units of competency that are sales specific when they do not intend to work in a sales environment. It is even more frustrating for those salespersons who wish to work for a business broker. They have to complete the

## **Submission to the Property Occupations Act**

seven units of competency currently required for salespersons just so that they can be employed by a specialist business broking agency. These people attend class for the sole purpose of satisfying the legislative requirements for registration and duly forget 90% of what they learn in the classroom because it has no relevance in their job occupation.

### **Resident letting agent**

A person or corporation that owns management rights in a complex that is covered by the community titles act must hold this licence if they wish to let lots in the complex. It is a restriction on the licence that the licensee must live on the premises. The educational qualifications required for such a licence consists of 6 units of competency from the CPP 07 training package.

### **An employee of a resident letting agent**

The current Act states that an employee of a resident letting agent will be a resident letting agent. This is a non-workable situation as few complexes have living quarters for employees.

## ***Proposed new occupational licences for the property industry.***

**I would propose the industry would be better served if the following occupational licences and certificates be incorporated in the new bill.**

### **Real Estate Agent**

There is no need for major change in this classification of licence other than as outlined further in this submission with respect to employees of real estate agents. With a view to the possible implementation of a national occupational licensing system it may be worthwhile at this stage to upgrade the educational qualifications for a real estate agent from 19 units of competency to a Certificate IV in Property.

To obtain a Certificate IV requires 24 units of competency. NOLA has recommended 21 specific units and three optional units in their proposal for a national licensing. Whilst it is important to regulate some specific units 21 is too large a number and excludes the opportunity for licensees in specific areas of work to select units of competency that relate to that area of work. I would

# Submission to the Property Occupations Act

propose that a real estate agent be able to perform all of the activities that are covered under the current act.

I would propose the following licence structure be introduced.

## ***Other Agent licences***

- a) ***Restricted real estate agent - business broking*** - a restricted licence that restricts the licensee to conducting the business of listing and selling businesses, including the Freehold of those businesses, should be introduced. Appropriate units of competency from the training package can be regulated as part of the educational qualifications. The restriction on this licence may also include a restriction on listing and leasing residential and commercial premises where such premises are not associated with the sale of a business. The educational qualifications for this licence should include a selection from the units highlighted in yellow in the addendum.
  
- b) ***Restricted real estate agent commercial and industrial***. This licence could be issued to agents who wish to specialise in the sale and leasing of non-residential property. NOLA proposes that such agents not be licensed. Such a proposal from NOLA has met with widespread condemnation within the industry and serves to prove how out of touch with occupational licensing that body is.  
The growth in self-managed superannuation funds has seen more small investors entering into the industrial and commercial property investment market. These investors require the consumer protection afforded to all others who buy and sell property. The educational qualifications for such a licence should include some units of competency that relate specifically to that type of operation.
  
- c) ***Restricted real estate agent residential property leasing***. Principals of a property management only office would be licensed under this category. The restrictions on the licence would prohibit them from conducting any form of property sales. This type of licence could also be granted to on-site managers with a letting business. This would take away the residential requirement restriction on a resident letting agent licence and allow the licensee to manage property outside of the complex in which the business is situated. There is a growing trend for developers to build complexes without a managers residence, just a manager's office. Current

# Submission to the Property Occupations Act

legislation deems that only a real estate agent can operate such a business. This may be seen as unnecessary restriction or red tape.

- d) **Resident letting agent.** This licence can be similar to the requirements of the existing resident letting agent licence. It should be noted that NOLA proposes the abolition of this type of licence. This has again highlighted the inadequacies in NOLA's understanding of the property industry in particular the tourism property industry in Queensland. This licence would be well-suited to an on-site manager who is required by the body corporate to live on the premises and restricts the licensee to conducting business within the confines of that complex. This type of licence is well-suited for managers in holiday resorts. The letting of lots for holiday purposes is often referred to short term letting. Managers of such complexes often take deposits for advance bookings which can be up to 12 months in advance. The absence of a licence for short term letting would result in an absence of regulatory requirements for trust accounts and would put forward deposits at risk. The educational requirements for a resident letting agent require some adjustment. I will refer to the educational requirements in an addendum to this submission.
- e) **Restricted real estate agent licence - other.** There may be other classes of restricted licence that the chief executive may see fit to issue. These may include such entities as shopping centre management, affordable housing. I will not address these classes of licence in my submission, as I have limited knowledge in this area.

## Employee registration

- a) **Salesperson registration.** This registration certificate would be issued to suitable applicants who wish to work in the sales department of a real estate agency. Appropriate educational qualifications will be required.
- b) **Property management employee registration.** A registration certificate for persons who wish to work in the Property Management department only of a real estate agency or who wish to be employed by a Property Management restricted real estate agency or who wish to work for a resident letting agent.
- At this point it is necessary to elaborate on the latter. When the occupational licence of resident letting agent first came into being a resident letting agents business

## Submission to the Property Occupations Act

consisted of a small to medium block of individually owned, self catered apartments. The number of units managed range from 12 to 50. Typically a husband and wife team owned and operated such a business. It was deemed more of a lifestyle occupation.

As has been mentioned previously community title scheme residential dwellings have evolved from this style to become gated communities and apartment blocks with anything up to 300+ apartments in the complex.

It is an impossible task to expect a single licensee or a licensed couple to conduct such a business. There is a need for the licensee to employ property management personnel to work in the business. It is an unreasonable requirement that *employees* of a resident letting agent *be* a resident letting agent that has the residential restriction on the licence. Most resident letting agents do not want their staff living with them.

- c) ***Business broking employee registration.*** A business broking real estate agent should be able to employ salespersons who are educationally qualified to conduct the business of a business broker. Currently the only qualification required to work for a business broker is to possess a salesperson's registration certificate. The educational qualifications for this certificate should contain some of the units highlighted in yellow in the addendum.

### Conclusion

Whilst at first glance the addition of extra categories of licensing may seem to be increasing red tape rather than reducing it, I believe the opposite is the case. By continuing the “one size fits all” model in the new Act, real estate professionals and their staff are either inadequately trained for their specialised field or having to obtain educational qualifications in excess of a reasonable requirement to fulfil their roles. I strongly encourage the Government to introduce licence categories specific to job roles, and require educational qualifications that best suit the role.

I strongly urge the Government to make Compulsory Professional Development (CPD) a requirement for licence renewals. NOLA has not recommended this and again has earned the condemnation of most professional organisations in the country. A previous position held by the Office of Fair Trading was that the Government should not regulate to improve a training providers revenue stream. What happened to Professionalism and Consumer Protection?

# Submission to the Property Occupations Act

## Addendum to submission by Paul Lupi

Below are the packaging rules and the Units of Competency for the **CPP40307 Certificate IV in Property Services (Real Estate)**

I have highlighted those Units of Competency that I believe should be included in the required qualifications.

Units highlighted in **yellow** are suggested units for business broking licences and registration certificates.

Any Unit highlighted in **red** is a **must** for resident letting agents and property management agents. Currently this unit is not in the resident letting agent required educational qualifications.

At a recent OFT information seminar OFT financial compliance staff made particular note of the number of invalid appointments (PAMDA 20a's) they come across. Little wonder, as completion of these is not part of the current required training. However, they do have to learn how to complete a tenancy agreement. Managers in a holiday resort never use tenancy agreements but all must have valid PAMDA 20a's.

# Submission to the Property Occupations Act

## CPP40307 Certificate IV in Property Services (Real Estate)

### Qualification requirements

#### Packaging rules

To achieve recognition at the Certificate IV level, the candidate must demonstrate competency in the five core units, plus nineteen electives (total twenty-four units).

At least ten elective units must be selected from property, sales and management, with the remaining elective units chosen from one or more of the following:

- property sales and management
- specialist
- common.

Up to two of the elective units may be chosen from:

- the Diploma of Property Services (Agency Management)
- any Certificate IV qualification in CPP07 Property Services Training Package
- any Certificate IV qualification in BSB07 Business Services or FNS04 Financial Services Training Package, provided that the units do not duplicate units in CPP07 Property Services Training Package.

All units must contribute to a valid, industry-supported vocational outcome.

#### Core units

CPPDSM4007A	Identify legal and ethical requirements of property management to complete agency work
CPPDSM4008A	Identify legal and ethical requirements of property sales to complete agency work
CPPDSM4009B	Interpret legislation to complete agency work
CPPDSM4015B	Minimise agency and consumer risk
CPPDSM4080A	Work in the real estate industry

#### Elective units

##### Property sales and management

CPPDSM3008A	Maintain and protect condition of managed properties
CPPDSM4001A	Act as a buyer's agent
CPPDSM4002A	Apply knowledge of state or territory legislative and regulatory framework to complete agency work

## Submission to the Property Occupations Act

CPPDSM4003A	Appraise property
CPPDSM4004A	Conduct auction
CPPDSM4005A	Establish and build client–agency relationships
CPPDSM4006A	Establish and manage agency trust accounts
CPPDSM4010A	Lease property
CPPDSM4011A	List property for lease
CPPDSM4012A	List property for sale
CPPDSM4013A	Market property for lease
CPPDSM4014A	Market property for sale
CPPDSM4016A	Monitor and manage lease or tenancy agreement
CPPDSM4017A	Negotiate effectively in property transactions
CPPDSM4018A	Prepare and present property reports
CPPDSM4019A	Prepare for auction and complete sale
CPPDSM4020A	Present at tribunals
CPPDSM4022A	Sell and finalise the sale of property by private treaty
CPPDSM4046A	Manage tenancy disputes
CPPDSM4049A	Implement maintenance plan for managed properties
<b>Specialist</b>	
CPPDSM3017A	Work in the strata/community management sector
CPPDSM4021A	Sell and finalise sale of rural property by private treaty
CPPDSM4023A	Act as a tenant’s agent
CPPDSM4029A	Appraise business
CPPDSM4030A	Appraise rural property
CPPDSM4033A	Assess and value goods, chattels, plant and equipment
CPPDSM4034A	Assess and implement strata/community management agreement
CPPDSM4036A	Broker sale of industrial, commercial and retail property
CPPDSM4038A	Conduct goods, chattels or equipment clearing sale or auction
CPPDSM4040A	Contribute to life cycle maintenance strategy
CPPDSM4041A	Contribute to development of a tenancy mix strategy

## Submission to the Property Occupations Act

CPPDSM4043A	Coordinate fit-out of property and facilities
CPPDSM4050A	Lease industrial, commercial and retail property
CPPDSM4051A	Lease rural property
<b>CPPDSM4053A</b>	<b>List business for sale</b>
CPPDSM4058A	Monitor service requirements in the property industry
CPPDSM4059A	Monitor space use in the property industry
CPPDSM4060A	Negotiate sale and manage sale to completion or settlement
CPPDSM4061A	Obtain prospects for listing
<b>CPPDSM4062A</b>	<b>Occupy space</b>
<b>CPPDSM4069A</b>	<b>Promote and market listed business</b>
CPPDSM4074A	Select and appoint contractors in the property industry
CPPDSM4078A	Sell rural property by tender
<b>CPPDSM4079A</b>	<b>Work in the business broking sector</b>
Common	
BSBCMM401A	Make a presentation
BSBHRM402A	Recruit, select and induct staff
BSBITS401A	Maintain business technology
BSBLED401A	Develop teams and individuals
BSBRKG304B	Maintain business records
BSBSMB404A	Undertake small business planning
BSBSMB406A	Manage small business finances
BSBWOR402A	Promote team effectiveness
CPPDSM4045A	Facilitate meetings in the property industry
CPPDSM4056A	Manage conflict and disputes in the property industry
CPPDSM4057A	Monitor a safe workplace in the property industry

17 January 2014

Research Director  
Legal Affairs and Community Safety Committee  
Parliament House  
George Street  
Brisbane QLD 4000

**By email: [lacsc@parliament.qld.gov.au](mailto:lacsc@parliament.qld.gov.au)**

Dear Sir/Madam

### **Property Occupations Bill 2013 and other bills**

The Real Estate Institute of Queensland (“**REIQ**”) appreciates the opportunity to make a submission in relation to the *Property Occupations Bill 2013*, the *Motor Dealers and Chattel Auctioneers Bill 2013*, the *Agents Financial Administration Bill 2013* and the *Debt Collectors (Field Agents and Collection Agents) Bill 2013* (collectively “**the Bills**”) which have emerged in connection with the split and review of the *Property Agents and Motor Dealers Act 2000* (“**PAMD Act**”).

As outlined in our response to the consultation paper released in February 2013 in relation to the split and review of the PAMD Act (“**REIQ Submission**”), the REIQ supports the split of the PAMD Act into industry specific legislation. As demonstrated by other stakeholder responses to the consultation paper, support for the same can be found amongst many connected with the real estate profession.

In this submission, we have focussed predominantly on the *Property Occupations Bill 2013* (“**the PO Bill**”) given that the majority of the amendments we recommended in the REIQ Submission relate specifically to this bill.

Generally, the REIQ is extremely pleased with the PO Bill and we support the passing of the Bill subject to the comments outlined in this submission. We have been extremely pleased with the extensive consultation undertaken by the government in respect of this legislative change process and acknowledge that the vast majority of the amendments we recommended in the REIQ Submission have been incorporated into the PO Bill.

We are confident that the new proposed legislative regime will simplify the real estate buying and selling process and greatly reduce the number of legal disputes that have arisen in connection with real estate transactions since the introduction of the PAMD Act. Unfortunately, many contract terminations have occurred due to technical and minor omissions of a legislative nature. Although the REIQ is an advocate for consumer protection, this must be balanced against contractual accountability and commercial reality and efficiency.

It is our view that the PO Bill delivers a far more balanced playing field which recognises the respective rights and obligations of all parties to a real estate transaction. The removal of administrative barriers and requirements such as, completion of assignment consent provisions in connection with all appointments and the need to attach a warning statement to all relevant contracts (together with other requirements associated with this document) are an excellent example of the removal of red tape and the much needed simplification of real estate transaction process.

**T** 07 3249 7347  
**F** 07 3249 6211

21 Turbo Drive, Coorparoo  
PO Box 1555, Coorparoo DC Qld 4151

**ABN** 49 009 661 287

Prior to the development of the REIQ Submission, the REIQ conducted extensive consultation with its membership and the broader industry to formulate the views and recommendations contained in that document. Subsequent to the release of the PO Bill, we have also undertaken a State-wide presentation to the REIQ membership in relation to the Bill. This presentation was delivered shortly after the PO Bill was introduced into Parliament and was delivered to approximately 1000 real estate practitioners. This presentation involved an overview of the key aspects of the Bill. In delivering that presentation, we sought feedback from the membership in relation to the PO Bill.

We are pleased to advise that the response to the PO Bill from the membership has been very positive. The comments made in this submission do however include some further recommendations for change based on membership feedback received.

## **Recommendations and comments**

### **1. Auction related matters**

#### **1(a) Statements made by auctioneers in the course of an auction**

Subject to a limited exception, sections 214 and 216 of the PO Bill prohibit an auctioneer and agent from disclosing any price or price guides in relation to a residential property auction sale.

The REIQ supports this general prohibition and we acknowledge that it is consistent with the recommendation made in the REIQ Submission. However, we are concerned that this provision may potentially impact on the practice of declaring a property to be 'on the market' once the vendor's reserve price has been met during the conduct of an auction.

It is our view that the relevant provisions are intended to prevent price guides being disclosed (other than as permitted in the PO Bill) leading up to an auction. Once an auction is in process, and provided a reserve has been properly established, the provision should not preclude an auctioneer from making a statement which indicates that the reserve has been met.

We are therefore seeking the inclusion of a provision in the Bill to clarify that an auctioneer will not contravene section 214(2) if the auctioneer makes a statement in the course of an auction that 'the property is on the market' or words to that effect *provided* that the reserve price has been reached or exceeded.

#### **1(b) Written appraisals to include price ranges**

Sections 213 and 215 of the PO Bill permit auctioneers and agents to provide a "*written explanation*" showing how the auctioneer or agent has "*decided the market value*" of the relevant property.

Some real estate practitioners have queried whether this provision permits an agent or auctioneer to provide an appraisal range as opposed to a single figure. The PO Bill does not provide a definition of the terms "*written explanation*" or "*market value*".

The REIQ's position is that a price range should be permissible given the significant risk and difficulty associated with providing a fixed figure appraisal.

Our view is that the provisions (as they stand) do not restrict an agent or auctioneer from providing a written explanation featuring a price range. However, given the level of concern and significance connected to this matter, clarification is desirable. We recommend that a provision be inserted making it clear that the market value may be expressed as either a single figure or range.

#### **1(c) Flexibility to prepare market value documentation**

The aspect of the Bill which has attracted the most amount of attention and criticism from our membership (and some within the broader property industry) is the introduction of the provisions restricting the use of

price guides in connection with auction and no-price properties (ss 214 and 216). As the peak body representing a broad range of views, we consider it important to acknowledge this.

As outlined in the REIQ Submission, we support these provisions for the reasons outlined in that document. Despite some opposition, as noted above, we have confirmed that the majority of the REIQ membership also support the principle of these provisions. That said, we are concerned that the PO Bill compel an agent or auctioneer to prepare a comparative market analysis (“CMA”) where they are asked by a vendor to provide “*information about the price at which the residential property that is to be, or maybe, offered for sale by auction*”. As shown below, sections 213 and 215 restrict an auctioneer or agent to prepare a CMA *unless* a CMA cannot be prepared (see underlined text):

**Section 213(4)**

*An auctioneer must not help a seller decide the reserve price for offered property unless, before the seller decides the price, the auctioneer gives the seller—*

- (a) *a copy of a comparative market analysis for the offered property; or*
- (b) *if a comparative market analysis can not be prepared for the offered property, a written explanation showing how the auctioneer decided the market value of the property.*

**Section 215(2)**

*If the real estate agent decides to give the person the information, the real estate agent must, when giving the person the information, give the person—*

- (a) *a copy of a comparative market analysis for the offered property; or*
- (b) *if a comparative market analysis can not be prepared for the offered property, a written explanation showing how the real estate agent decided the market value of the property.*

On account of the above, an agent or auctioneer is only permitted to prepare the second type of document (a “written explanation”) if the data required for a CMA is not available. A CMA is by its very definition extremely restricted in nature:

**Comparative market analysis**, for an offered property, means a document comparing the offered property with at least 3 properties sold within the previous 6 months that are of a similar standard or condition to the offered property and are within 5km of the offered property (Schedule 3).

The REIQ is strongly opposed to this legislative restriction. Whilst the REIQ advocates the preparation of appraisals substantiated with objective data (where available), CMA’s are not widely used in the industry and are not seen as sufficiently reliable price guide tools. This is because a CMA comprises very limited data which may not always be relevant to the specific property to be sold. By supplying a vendor with CMA data alone, the unique characteristics and features of the property being sold are not taken into account. Consequently, a CMA will not always be an accurate reflection of the true market value of the relevant property.

It is critical that agents and auctioneers have the flexibility to prepare a “written explanation” encompassing a range of information and factors they have considered in forming a view about the market value of the property. As discussed above, comparable sales data is important (where available and relevant) but the appraisal should not be exclusively limited to the restricted data permitted to be used for the purposes of a CMA.

The need for this flexibility is particularly important given that the PO Bill provides agents and auctioneers with only one method of external price guide advice; an agent and auctioneer are only permitted (subject to the vendor’s consent) to provide prospective purchasers with the *same* document they have previously prepared for their vendor clients (s214(3) and 216(4)). On account of these legislative restrictions contained

in sections 214 and 216 of the PO Bill, this means that a prospective purchaser will usually receive a CMA rather than a written explanation.

For the same reasons outlined above, the REIQ is concerned by the prospect of a potential purchaser relying on the limited data in a CMA to form a view as to the price sought for the relevant property.

In light of the above matters, we are seeking the removal of the following underlined text in the following sections in the PO Bill:

**Section 213(4)(b)**

*if a comparative market analysis can not be prepared for the offered property, a written explanation showing how the auctioneer decided the market value of the property;*

**Section 215(2)(b)**

*if a comparative market analysis can not be prepared for the offered property, a written explanation showing how the real estate agent decided the market value of the property.*

The REIQ views this issue as one of critical importance to the real estate profession. It is imperative that agents or auctioneers have the freedom to prepare meaningful appraisals for vendors so that they can form an accurate view on the market value of their property. Without this, an effective and efficient campaign is difficult to facilitate. Similarly, potential purchasers should be given (where the vendor is prepared to do so) accurate price guide information.

**2. Chattel auctioneers licence**

We are pleased to note that, as recommended in the REIQ Submission, the requirement to be licensed to auction chattels has been incorporated into the *Motor Dealers and Chattel Auctioneers Bill 2013*. Our support for chattel auction licensing remains firm.

The PO Bill states that auctioneers may only auction chattels where they are directly connected to a property sale. Our regional and rural auctioneer members are commonly engaged to conduct 'stand alone' chattel auctions involving the sale of farming machinery, livestock and other miscellaneous goods. These auctions often have no direct connection to a property sale. Consequently, many auctioneers (licensed under the PO Bill) will need to hold a separate licence to conduct chattel auctions not related to property.

It is our view that property auctioneers should be able to conduct both chattel and property auctions without the need for an additional licence and/or any other additional training. Accordingly, we are seeking an amendment to the PO Bill which provides that property auctioneers may conduct auctions involving real property and chattels (regardless of whether the chattels are associated with a property sale) *provided* they comply with the requirements of both the PO Bill and the *Motor Dealers and Chattel Auctioneers Bill 2013*.

As an alternative to the above, we are seeking the insertion of a provision in the *Motor Dealers and Chattel Auctioneers Bill* which allows auctioneers who are licensed under the PO Bill to:

- automatically qualify for a chattel auctioneer licence provided they have a current auctioneer licence under the PO Bill; and
- to obtain a chattel auctioneer licence:
  - without the need for further educational training; and
  - for no additional fee.

### 3. Advertisements for a business

Under section 95 of the PO Bill, an agent and a resident letting agent must not publish, or permit to be published, in a newspaper or elsewhere “*an advertisement for the agent's business*” without stating in the advertisement the particulars that may be prescribed under a regulation.

We recommend that for the sake of clarity, a definition of this type of advertisement be included in the PO Bill. For example, it is not clear whether the provision extends only to advertisements exclusively promoting the business itself or, whether an advertisement that includes an advertisement for the business in connection with a property listing is also captured.

The REIQ recommends that the definition be limited to an advertisement that is published exclusively for the purpose of promoting the relevant business. The cost and practical difficulties associated with including prescribed information in other types of advertisements would be significant.

It is also important that the regulations, when drafted, take into account the scope of the provision and consider the practical consequences and expense associated with dictating the size and detail of the prescribed information.

### 4. Proposed Exemptions

The REIQ has held a long standing position that all individuals engaged in practices governed by real estate legislation should possess certain minimum educational qualifications and be licensed (or registered) to undertake the relevant activities. We consider this is critical to consumer protection. It also ensures accountability and means that real estate transactions are facilitated by individuals with minimum requisite knowledge and training.

The REIQ has carefully considered the exemption proposed under sections 7 and 8. We are prepared to support the exemption proposed under section 7 of the PO Bill given the transactions contemplated in that provision relate only to related entities.

We are also prepared to support the exemption proposed in section 8(1)(b) of the PO Bill *provided* that the threshold amount is set at a total gross floor area of at least 10,000sqm. We consider that this threshold is appropriate to ensure the parties to such a transaction are “sophisticated” (in line with the policy intent outlined in the explanatory notes) and do not require the level of consumer protection otherwise warranted.

We are also prepared to support the exemptions proposed under section 8(2) provided that:

- a person acting under this exemption is required to undertake educational training that is at least equivalent to the training they would otherwise be required to undertake (to qualify for registration) to perform the subject activities if the exemption under section 8 did not exist; and
- the minimum threshold mentioned above applies.

If the above recommendations are adopted, we consider that this exemption will apply predominantly to large shopping centres. Although tenants within such buildings will not necessarily be a ‘sophisticated’ party, we note that these parties can rely on other legislative safeguards available under the *Retail Shop Leases Act 1994*.

We are concerned by the provision in section 9 which prospectively allows the expansion of ‘other’ exemptions through the regulations. We are prepared to support the provision if further exemptions are subject to prior consultation with the real estate industry.

## **Conclusion**

The REIQ and its members look forward to the passing of the Bills. We have intentionally limited our comments in this submission to issues we consider to be particularly critical.

We wish to acknowledge the excellent level of consultation between the government and our organisation in relation to the Bills. The consultation has been productive and we appreciate that the vast majority of our recommendations for legislative change have been adopted. We are confident that the new legislative platform offered through the Bills will create positive change and simplification.


Subject to the recommendations and comments in this submission, we support the passing of the Bills.

The REIQ welcomes the opportunity to appear before the Legal Affairs and Community Safety Committee to discuss the matters outlined herein or any other aspect of the Bills.

We confirm that no aspect of this submission is confidential.

If you would like to discuss any aspect of this submission, please do not hesitate to contact Ms Antonia Mercorella, General Counsel on: [amercorella@reiq.com.au](mailto:amercorella@reiq.com.au) or 3249 7325.

Yours faithfully

A handwritten signature in black ink, appearing to read 'A. M. Kardash', written in a cursive style.

**Anton Kardash**  
MANAGING DIRECTOR AND  
CHIEF EXECUTIVE OFFICER

17 January 2014

The Research Director  
Legal Affairs and Community Safety Committee  
Parliament House  
George Street  
BRISBANE QLD 4000  
[lacsc@parliament.qld.gov.au](mailto:lacsc@parliament.qld.gov.au)

Dear Research Director

**Property Occupations Bill 2013**

Thank you for the opportunity to provide comments on the Property Occupations Bill 2013 (the Bill) which replaces aspects of the *Property Agents and Motor Dealers Act 2000* (PAMDA).

The Society was consulted in the process of forming the Bill and acknowledges that a number of the suggested drafting changes have been incorporated in the Bill. The Society is grateful to the Government for the opportunity to provide input at an early stage. The Society has long advocated that good stakeholder consultation is the key to good law.

The Bill has been reviewed by the Society's Property Development and Law Committee who were generally supportive of the proposed changes in particular the simplification of the warning statement and the removal of the requirement to direct a buyer's attention to the statement. However the members were keen to make a number of observations about the final text of the Bill, recognising that some of the matters identified have been policy decisions of the Government.

**Waiving cooling off in residential property sales contract**

The Committee noted that proposed section 167 of the Bill alters the way in which a person may waive or shorten their right to a cooling-off period in a residential property sales contract. In order to waive or shorten the cooling off period, under the current legislation, a person requires a certificate that an independent lawyer has explained to the buyer<sup>1</sup>—

- the effect of the proposed contract
- the purpose and nature of the certificate

---

<sup>1</sup> PAMDA, ss 369A – 369B

- the legal effect of the buyer waiving or shortening their cooling off rights.

The Bill proposes that this can now be done simply by written notice from the buyer to the seller.

The Committee cautions against this change as it would be too very easy for an unscrupulous or rogue seller/agent to obtain a signed notice of waiver from a buyer who did not realise the implications of what they were signing. This risk is particularly heightened for buyers who are unfamiliar with the process of residential contract formation in Queensland.

Members of the Society report that buyers rarely obtain legal advice prior to committing to a contract for the purchase of residential property and are often unfamiliar with the terms of the contract they have signed.

Accordingly the protection of the independent lawyers certificate should be retained. The argument for the reduction of red tape does not outweigh the protection afforded to vulnerable buyers. In this regard the Committee was of the view that the requirement for independent legal advice was crucial for the cooling off period to be of any real consumer protection.

The Committee notes that the cooling off and independent advice for waiver were key elements of the measures taken to address the marketeering of residential property.

The Committee notes that in New South Wales a similar certificate is required to waive cooling off rights<sup>2</sup>.

#### **Extended auction exemption to 2 business days and form of the 'particular matters'**

The Committee noted that proposed section 160(1)(b)(ii) operates to make a contract signed within two days of an auction with a registered bidder at an auction to be excluded from the requirements of the Part and the application of the cooling off provisions.

Whilst the Committee agreed in principle with the change we note that resultant amendments have been made to the 'particular matters' in clause 165 to make the statement equivocal so that it can appear on either auction contracts or private treaty agreements. We continue to suggest that this will lead to confusion for members of the public about whether they have the benefit of the cooling off provisions.

While this approach may reduce red-tape for selling agents, it will add red-tape (and possibly costs) to the conveyancing process as:

- (a) buyers risk losing their deposits if they wrongfully terminate contracts in the mistaken belief they have the benefit of a cooling off period
- (b) it will not be apparent to a buyer's lawyer on the face of the contract whether there is a cooling off period. This will create an additional step in the conveyancing process as it will necessitate a buyer's lawyer giving detailed advice in each case about when a cooling off period applies. Further enquiry and investigation will often be required
- (c) where buyers are purchasing following an auction using corporate or trustee entities, it may be impossible for the buyer's solicitor to ascertain whether the entity named on the contract was exactly the same entity as that registered to bid at the auction
- (d) in some instances it may not be possible to ascertain whether there is a cooling off period before the period expires.

---

<sup>2</sup> *Conveyancing Act 1919 (NSW)*, s66W

The Committee is firmly of the view that the 'particular matters' should only be included on a contract where there is a cooling off period. Where a pre-printed form of contract is utilised (which is almost invariably the case), it would be a simple matter for the person preparing the contract to rule through the 'particular matters' section.

The benefit of this approach is:

- (a) it removes any uncertainty and risk from a buyer's perspective
- (b) it imposes a very simple obligation on the person preparing and attending to execution of the contract. This is the person best able to identify whether the cooling off period applies
- (c) where that person makes a mistake and forgets to delete the 'particular matters' the only consequence is that the buyer receives the benefit of a cooling off period. Unlike the present position (where contracts may be terminated on technical grounds which might not be readily apparent to a seller) the particular matters would clearly identify to *both parties* that a cooling off period applied.

#### **Proposed contract to include particular matters**

Whilst the Committee commends the approach adopted in proposed section 165 of removing the need for a warning statement to be attached to the proposed relevant contract and for particular matters to be incorporated within the body of the contract, the Committee does not agree with the removal of the existing termination right for a buyer where a seller fails to comply.

The particular matters to be included go to the heart of the consumer protection requirements of the Bill, advising purchasers of the existence of the cooling off period and also suggesting that purchasers obtain legal advice prior to binding themselves to the contract. This information is of crucial importance to an ill-informed buyer and is presented where the buyer signs to indicate the buyer's intention to be bound.

This obligation appears to be both effective at alerting a buyer to salient facts and efficient in terms of the low compliance burden placed upon sellers and their representatives. It is envisaged that the particular matters would be included in the standard form contracts and would be in place in 'regular' transactions automatically.

The Committee saw the rationale for this approach in the fact that the new requirement is quite modest and would be included within the text of the standard conveyancing contracts and developers are likely to ensure that the text is included within the standard developers' contracts. It was thought that this would cover almost all residential property transactions and would not enliven the termination right in those cases. The Committee was concerned, however, for those occasions where a shyster was intent upon deceiving and pressuring a buyer into a sales contract. In those cases it is likely that:

- the buyer would not have the existence of the cooling off period brought to their attention
- the buyer may not seek legal advice on the terms of the contract promptly

- the buyer may consequently not take action within the required timeframes to terminate the contract within the cooling off period.

The Committee considered that these were the cases where the consumer protection aspects of the Bill were most needed. However, as s167 currently stands, a deceived buyer has no remedy and is bound by the contract. The omission of the particular matters is a regulatory offence, which may or may not be prosecuted by the relevant regulatory authority depending on the evidence available to them. This is little comfort to a deceived buyer.

For these reasons the Committee was of the view that in order to ensure that the consumer protection elements of the Bill are still effective, while also reducing red tape and better facilitating residential property sales, a time-limited termination right to the buyer should apply if the particular matters are not included within the contract. The Committee was of the view that the current 90 day time limitation of termination rights may be appropriate so as not to frustrate long-term agreements where a buyer has not sought advice or has not taken any action on the sale contract within a three month period.

The Committee noted that the approach described above has been in place in New South Wales for some time<sup>3</sup> and has not lead to the technical terminations and disputes which the former versions of PAMDA engendered. Again in NSW the relevant wording is in place on the standard agreements and accordingly 'regular' transactions are excluded from the operation of the termination right.

#### **Terminating relevant contracts**

Proposed section 168 now provides that a party may terminate the contract during the cooling-off period by giving signed notice of termination to the seller. Previously the buyer was obliged to state in the notice that the contract was terminated under the relevant section of PAMDA relating to terminations by cooling off<sup>4</sup>.

While the new requirement is less onerous, the Committee has concern that there may now be uncertainty about which right of termination a buyer is exercising where the buyer could have multiple grounds for termination (for example, a contract that is subject to finance or subject to a satisfactory pest inspection). This may in turn lead to disputes as it will be unclear whether the buyer is entitled to retain the termination penalty. Whilst the Committee agrees the existing provision is overly prescriptive, a buyer who is relying on the cooling off period to terminate should be required to indicate that it is doing so.

#### **Definition of residential property**

Proposed section 21 is a significantly simplified definition of 'residential property', which is supported.

With respect to the current drafting, however, we note that the definition includes property that is "intended to be used, for residential purposes". We agree that a definition that merely focuses on the current use at the time the contract is signed is not appropriate as the cooling

---

<sup>3</sup> *Conveyancing Act 1919* (NSW) s66X

<sup>4</sup> PAMDA s370A(2).

off provisions are intended to apply to off-the-plan apartment sales and vacant land sales in housing estates. However the proposed definition is problematic in that:

- it is unclear whose and at what time the intention is relevant;
- a seller may not necessarily know a buyer's intention for a property;
- it is not clear if a contract to sell a vacant development site for construction of apartment buildings would fall within the definition (ie whilst the buyer's intention is commercial, the ultimate intention is for residential use);
- it is unclear whether a holiday apartment being purchased by an investor for short term letting is being used for commercial or residential purposes.

### **Commission in sale with beneficial interest**

The Committee noted that the prohibition on recovery of commission where an agent acquires a beneficial interest in a property has been removed<sup>5</sup> in proposed section 155.

The Committee's view was that commission would generally not be recoverable in such circumstances under general equitable principles relating to agent's dealings with its principal. The Committee therefore does not support this aspect of the proposed Bill.

The Committee also noted that equitable principles require that for consent to be effective, it must be fully informed consent. The Committee was concerned that the wording of the section may reduce the general law duties and considered that this be provided for in the section and that the existing form (PAMD Form 28) be amended to enable all relevant facts and circumstances to be disclosed in light of the agent's general law obligations and obligations in sub-section (4)(a)(ii). An example of required disclosure would be where the agent has knowledge (not publicly available) of a planning scheme change which would increase the market value of the property.

### **Administrators**

Proposed section 6 of the Bill exempts liquidators and controllers appointed under the Corporations Act from certain requirements. However the Committee noted that the definition did not extend to receivers appointed over the assets of individual licensees under a mortgage or security interest. This is particularly an issue where receivers are appointed to operate management rights businesses which are often owned by individuals rather than corporations. The Committee acknowledges that the appointment of receivers over individuals is not regulated and accepts it is not appropriate for unqualified and unlicensed persons to be entitled to act as agents and operate a trust account. However in practice the persons appointed are insolvency practitioners and are entitled to act as liquidators under the Corporations Act.

The Committee proposes that this practical issue be overcome by extending the exemption to persons who are appointed as receivers for an individual licensee provided they are *entitled to be appointed* as the liquidator of a corporation under the Corporations Act.

### **Security deposits in large scale transactions**

The Committee noted that a new exemption has been introduced in proposed section 8 for large scale non-residential property transactions/management.

---

<sup>5</sup> PAMDA, s145A(4)(b)

The Committee noted that it was common for managers of large shopping centres and office buildings to hold substantial security deposits provided by tenants. The Committee expressed concern that, as a result of the exemption from the Act, there would not be any requirement for these security deposits to be held in an audited trust account. This would create a significant risk of loss to the tenants, most of whom would be small business owners, in the event of fraud or insolvency of the property management company.

### **Transitional arrangements**

The Committee notes that proposed section 266 of the Bill provides the transitional arrangements for contracts 'entered into' prior to commencement.

The transitional arrangement does not deal with complying contracts delivered to a buyer prior to the commencement which are formed on or after the commencement.

For the sake of certainty for industry and to avoid the considerable burden of having to reissue contracts issued but not entered into before the commencement date it would be beneficial if the section clarified that a contract:

- given to a buyer before the commencement
- which complied with the obligation to have attached a warning statement under section 368A(2)(a) of PAMDA
- entered into on or after the commencement
- is deemed to have complied with proposed section 165 of the Bill.

In substance the information contained in the 'particular matters' in proposed section 165 is a subset of the information contained on the Form 30c warning statement and therefore there would be no prejudice to a buyer from the deeming proposed.

Thank you again for providing the Queensland Law Society with the opportunity to provide comments. If you wish to discuss any aspect of these submissions, please contact the Society's Principal Policy Solicitor, Mr Matt Dunn, on 3842 5889 or via email on [m.dunn@qls.com.au](mailto:m.dunn@qls.com.au).

Yours faithfully



Ian Brown  
President



20 January 2014

Research Director  
Legal Affairs and Community Safety Committee  
Parliament House  
George Street  
Brisbane Qld 4000

Dear Sir

**Property Occupations Bill 2013**  
**Motor Dealers and Chattel Auctioneers Bill 2013**  
**Debt Collectors (Field Agents and Collection Agents) Bill 2013**  
**Agents Financial Administration Bill 2013**  
**Fair Trading Inspectors Bill 2013**

I write in response to the letter of Mr Berry MP, Chair, dated 28 November 2013 inviting the Association to make submissions in relation to the Bills listed above.

In combination the first three Bills repeal the *Property Agents and Motor Dealers Act 2000* (“PAMD”) and replace it with three industry specific Acts. Additionally the *Agents Financial Administration Bill 2013* deals with the financial obligations of licensees whilst the *Fair Trading Inspectors Bill 2013* consolidates and makes uniform inspectorate provisions currently spread over 14 separate Acts.

The stated objectives of the Bills include reducing red tape and regulations currently imposed on the industries covered.

In combination the Bills largely replicate and refine existing provisions. Where there are changes to the law there are no doubt industry and consumer groups well placed to comment on the practical effect of those changes. I note that a number of “peak bodies” are listed as being consulted during the development of the Bills.<sup>1</sup> I will therefore limit my comments to changes of concern and interest to the Association.

#### Property Occupations Bill 2013

The bill provides that some persons carrying on the business of a property agent are exempt from the provisions of the proposed Act. In particular:

<sup>1</sup> Explanatory Notes of each Bill.

- Clause 7 exempts a person acting for a related entity in relation to non residential property conditional on that person disclosing in any advertising or contract its relationship to the owner of the assets. The rationale for the change is that when a person is acting on behalf of a related entity they are not truly acting as an agent.<sup>2</sup>
- Clause 8 exempts agents acting for “sophisticated owners” of non residential property. The rationale for the exemption is that such persons do not need the consumer protection afforded by the Bill.<sup>3</sup>

The Association understands the policy behind the exemptions and makes no further comment.

### Motor Dealers and Chattel Auctioneers Bill 2013

Clause 157(1)(d) provides that a person is not suitable to hold a registration certificate if the person is an “identified participant in a criminal organisation”.<sup>4</sup> The Association accepts that persons of proven bad character should not be licensed under the proposed Act. The Government has publicly expressed concerns about outlaw motorcycle gangs and have responded legislatively. However, it is becoming apparent that not all members of every gang are people who have committed, or are likely to commit, offences. For this reason, the Association has concerns about this Bill which, if enacted, results in legislation that discriminates against a person simply because that person is a member of a group.

Additionally Clauses 202 and 203 limit the rights of review when a person is refused a license or certificate on the basis of being a participant in a criminal organisation by restricting access to information on which the original decision was based and excluding the operation of part 4 of the *Judicial Review Act 1991* respectively. Again the Act will discriminate against a person only because that person is said to be a member of a particular group. This is undesirable.

### Debt Collectors (Field Agents and Collections Agents) Bill 2013

Under the PAMD any person engaging in the collection of debts required a license.

The Bill however distinguishes between a “field agent” and a “collection agent” and requires that only a field agent be licensed.<sup>5</sup> A field agent is defined as a person who engages in debt collection, repossessions and/or process serving<sup>6</sup> whereas a “collection agent” only engages in the “collecting of, or requesting payment of, debts” where there is no face-to-face contact.<sup>7</sup> Both are required to maintain trust

<sup>2</sup> Page 40, Explanatory Notes.

<sup>3</sup> Page 40, Explanatory Notes.

<sup>4</sup> Schedule 4 of the Bill adopts the definition of “criminal organisation” from Section 1 of the Criminal Code.

<sup>5</sup> Clause 14.

<sup>6</sup> Clause 14.

<sup>7</sup> Clause 19, Clause 10 and Schedule 3.

accounts and can be the subject to an application to the claim fund for consumers negatively impacted by their behaviour.

Rather than requiring a license, a collection agent has “automatic authorisation” to carry on the business of debt collection either alone or with others conditional on them being “suitable”.<sup>8</sup>

The rationale for the “negative licensing” regime is that because collection agents do not engage in face to face contact a debtor has greater control of how they manage the contact by, for example, hanging up the telephone, ignoring correspondence or negotiating.<sup>9</sup>

The Association expresses its concern that collection agents are automatically authorised to engage in debt collection. Whilst it is accepted that misconduct of collection agents will still be captured under that proposed Act, some debtors because of their circumstances are vulnerable to unscrupulous operators even when that contact is by telephone or correspondence. I suggest a licensing regime which catches all those involved in collection of debts is a necessary part of an effective regulatory scheme.

#### Agents Financial Administration Bill 2013

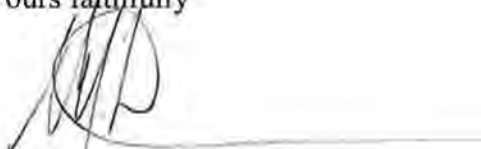
I note that in the proposed Act offences for misleading conduct and misuse of a trust account carry a maximum penalty of two years imprisonment<sup>10</sup> as opposed to the offences of that type currently being indictable with a three year maximum penalty.

The Association considers sensible (with respect), the explanation provided for in the Public Briefing of the Committee by the Deputy Director General that the lesser maximum penalty allows for an infringement notice to be issued for minor breaches whereas serious conduct can be prosecuted under the Criminal Code.<sup>11</sup>

The Association thanks the Committee for the opportunity to make this submission.

Should you require anything further from the Association I invite contact.

Yours faithfully



Peter J Davis QC  
**President**

---

<sup>8</sup> Clause 19 and Part 6.

<sup>9</sup> Page 4, Explanatory Notes.

<sup>10</sup> Clauses 21, 136, 137 & 138.

<sup>11</sup> Transcript of Proceedings, 12 December 2013.



tenants' union of queensland inc

TENANTS WORKING TOGETHER

January 21, 2014

Property Occupation Bill 2013  
Submission 019

The Research Director  
Legal Affairs and Community Safety Committee  
Parliament House  
George Street  
BRISBANE QLD 4000  
[lacsc@parliamentqld.gov.au](mailto:lacsc@parliamentqld.gov.au)

Dear Committee

Thank you for the opportunity to provide comments on the Property Occupations Bill 2013 (*the Bill*).

Due to our limited time to respond, this submission identifies only issues of broad concern to the Tenants' Union of Queensland (TUQ). Further, we write to represent the interests of residential renters in Queensland (the *customer*) and our submission focuses on the effects of the Bill on renters of residential properties managed by licensees.

#### **Code of Conduct**

The TUQ is concerned with the effect of *the Bill* to repeal the current Code of Conduct for property agents and residential letting agents in regard to their *customers*. Whilst the proposed section 235 allows for the making of conduct standards, none are currently proposed. These standards provide important protections for the customers of licensees and must be seen as an integral part of the passage of legislation.

The TUQ calls for the drafting of the updated Code of Conduct to be considered at the same time as the passage of the Bill. Without this, it is impossible to assess the effect of legislative changes for *customers*. The TUQ would hope to be consulted about future proposals regarding conduct affecting the customers of licensees.

#### **Capping of Commissions**

The TUQ is opposed to the deregulation of commissions, as per the Property Agents and Motor Dealers Act 2000 (PAMDA) section 579.

The rationale for this removal is that it will put downward pressure on commission prices. This has not been the experience of the TUQ. With the introduction of section 171(c) of the Residential Tenancies and Rooming Accommodation Act 2008, the TUQ saw the concerning introduction of administration and other charges by body corporates and caravan parks where the utilities were provided through an embedded network.

#### **Transparency regarding the on-charging of commissions and fees**

Commissions and fees are sometimes passed onto customers by licensees who often attempt to have customers pay these commissions and fees before the cost is borne to their client. The TUQ

#### **STATEWIDE**

28 Robertson St, Fortitude Valley Q 4006

ph 3257 1411 fax 3257 1135

[www.tuq.org.au](http://www.tuq.org.au) [mail@tuq.org.au](mailto:mail@tuq.org.au)

---

Tenancy advice statewide: Ph 1300 744 263 (Mon, Wed & Thu 9am – 12.30pm, Tues & Wed 3.30pm-7pm)  
Caravans & Manufactured Homes Advice line: Ph 07 3852 2064

believes this behaviour is common place; it attempts to secure the commission for the licensee rather than seek compensation for cost which may otherwise be imposed on their clients, but without any test of reasonableness required under Queensland tenancy laws.

*Customers* require a quick and easy path to complain about such actions.

Further, when a licensee seeks compensation from the *customer* for a commission or fee required of their client, the customer should be allowed to see evidence of the quantum and requirements on the client. That is, the *customer* should be provided with evidence that the claimed fees and charges are set out in an agreement between the licensee and their client.

If you require any further information about this submission, please contact me at the address below.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Penny Carr', with a stylized, cursive script.

Penny Carr  
Statewide Coordinator

## Property Occupations Bill 2013

### 1. Introduction

This is a submission regarding the Property Occupations Bill 2013, prepared by Jeff Ball.

Jeff Ball is a co-author of the leading Queensland property blog, **Brisbane-Apartment.com**, and is the author of two books:

- "Investing in Brisbane Apartments"
- "Buying An Apartment Off The Plan in Queensland"

This submission relates to only a few sections in the Bill.

### 2. Section 212: False Representations About Property

Proposed section 212 states that a licensee or real estate salesperson must not make a false or misleading representation about the letting or sale of property to any person. This includes representations about the value of the property, potential income from leasing the property, prior sale date, prior sales price, or tax impact.

This section is similar to section 574 in the PAMD Act.

It is not entirely clear, but one assumes that section 212 applies both where the real estate agent makes a false or misleading representation to a potential seller (to obtain a listing) and to a potential buyer (to obtain an offer).

Based on my experience, common false or misleading representations made by real estate agents in Queensland to potential sellers include:

- How long it will take to sell the property
- The likely sales price of the property
- That a particular type of sales process will be the most effective – typically, that an auction will be more effective than private treaty to sell the property, when in fact, the agent has no basis for this representation
- That a particular form of advertising will be more effective or be necessary to sell the property.
- That the agent has a particular track record, or successfully sold a particular property.

It is unclear whether the above types of misrepresentations are covered by section 212, or any other provision of the Bill. It is recommended that section 212(2) be expanded so that the above types of misrepresentations are clearly included.

In addition, common false or misleading representations made by real estate agents in Queensland to potential buyers include:

- That other people have made an offer, when in fact that is not the case
- That the property has a certain number of bedrooms, when in fact the property does not
- That the rates or body corporate fees for a property are lower than actually is the case
- That the current gross income for a property is \$X per year, but not disclosing the costs associated with this income or disclosing the true net income of the property – this particularly arises for holiday and short term rental properties
- In an auction situation, making false bids on behalf of a fictitious telephone bidder
- That the property has been on the market for a short period of time, when this is not true.
- That the views from the property will not be built out in the future

The above types of misrepresentations do not appear to be clearly covered by section 212, or any other provision of the Bill. It is recommended that section 212(2) be expanded so that the above types of misrepresentations are clearly included.

Section 212 should also be strengthened make sure that it clearly covers representations about other properties, not just the property that is for lease or sale. For example, it is not uncommon for an agent to make a misrepresentation about another property to a potential buyer or seller – for example, “I have sold 20 properties this year in the area” or “I just sold apartment X upstairs for \$400,000”.

The consequences for breach of section 212 are weak.

Ideally, the misled seller or buyer should have additional remedies available to them.

For example, a misled seller should be able to rely upon one or more of the following remedies if the agent breaches section 212 to obtain a property listing:

- Cancel the agents exclusive appointment
- Obtain a refund of advertising expenditure
- Obtain a refund of any commission paid to the agent

Similarly, a misled buyer should be able to rely upon one or more of the following remedies if the agent breaches section 212 to obtain an offer:

- Damages from the agent for the costs of any third party building or pest inspections etc.
- Ability to cancel the contract of sale, prior to settlement (and with the seller having the ability to claim damages from the agent for any loss as a result of such cancelation of the contract of sale)
- Ability for the seller to cancel the agents exclusive appointment

### **3. Section 213: Representation of Price of Property to Seller – Auctioneer**

This section only applies if a seller asks an auctioneer for information about the price at which a residential property is likely to be sold if it is sold at auction.

If the seller does not ask the auctioneer for this information, then it appears the whole section does not apply. This is overly limiting. For example, if the seller only asks “what price should I set as the reserve price”, then the whole of this section will not apply at all.

In limited circumstances, the auctioneer must provide the seller with a CMA. The section does not require that the CMA include the auctioneer’s view of the likely price at which the property is likely to be sold if sold at auction, the auctioneer’s opinion of the market price for the property or of a recommended reserve price. Thus, section 213(4) requires that the auctioneer provide raw information to the seller, for the seller to decipher, but no written opinion, conclusion or recommendation.

In fact, nowhere in the Bill is there any obligation on the auctioneer to provide the seller with his or her opinion of an expected sales price, a suggested reserve price or an estimate value of the subject property.

It is unclear in section 213 whether the auctioneer must himself or herself prepare the CMA, or whether the auctioneer could have another person produce the CMA. Thus, a CMA could be provided to the seller that does not express the auctioneer’s view or opinion or selection of comparable properties. The CMA provided by the auctioneer could even be a CMA that the auctioneer believes is misleading.

#### **4. Section 214: Auctioneer not to disclose reserve or other price**

Under proposed section 214, if the auctioneer gives a CMA to the seller under section 213, the auctioneer must not give the CMA to any person without the seller's written approval.

Often an auctioneer is instructed via a real estate agent. It is noted that section 214 prohibits the auctioneer giving the CMA to the real estate agent, unless the seller approves in writing. This appears somewhat strange.

Under proposed section 214(2), the auctioneer must not disclose to a person (other than a person acting for the seller in relation to the sale):

- the reserve price set for the property
- an amount the auctioneer considers is the price likely to result in a successful bid for the property
- a price guide for the property

It is unclear what is included in the expression "a price guide for the property". A CMA is commonly considered to be a price guide for the property. How section 214 interacts with sections 213 and 216 is unclear.

Section 214(2) cannot be waived by the seller. Section 214(2) prohibits the auctioneer from telling the seller an amount the auctioneer considers is the price likely to result in a successful bid for the property, or from providing the seller with a price guide for the property. Strangely, the auctioneer can give this information to the seller's real estate agent, but not to the seller. It is recommended that section 214(2) be able to be waived by the seller, or at least, that it does not apply to disclosures to the seller.

#### **5. Section 215: Representation of price of property - real estate agent**

This section only applies if a seller asks a real estate agent for information about the price at which a residential property is likely to be sold. If the seller does not ask the agent for this information, then it appears that the whole section does not apply. Thus, if the seller asks the agent for a suggested listing price, but not the price at which the property is likely to be sold, then this section does not apply (and there is no obligation to provide a CMA).

Similar comments made above regarding section 213 also apply to proposed section 215.

#### **6. Section 216: Real estate agent not to disclose reserve or other price**

Similar comments made above regarding section 214 also apply to proposed section 216.

The section prohibits the agent giving the CMA to the auctioneer, unless the seller approves in writing.

The proposed section only prevents the agent disclosing the CMA that the agent gives to the seller. It does not prevent an agent giving a different CMA to a potential buyer.

If the agent prepares a CMA and gives it to the auctioneer with permission of the seller, there is nothing preventing the auctioneer giving that CMA to a potential buyer. Moreover, if the seller does not ask for information about the price at which the property is likely to be sold, and the agent gives a CMA to a seller on an unsolicited basis, there is nothing preventing the agent giving that CMA to a potential buyer.

It is unclear what "a price guide for the property" covers. Does this section prevent a real estate agent giving a price range or even a price for the property in an advertisement, for a private treaty sale? In relation to private treaty sales, this would be a very strange result, and is contrary to current practice.

In an auction situation, section 216(2) prohibits the real estate agent from informing the seller an amount the agent considers is the price likely to result in a successful bid for the property. This appears to contract section 215, which allows such information to be provided to the seller.

Similarly, section 216(2) prohibits the real estate from giving the seller a "price guide" for the property in an auction situation. Presumably, a "price guide" is not the CMA, because section 215 requires a CMA to be provided, but this is not clear.

Jeff Ball

[www.brisbane-apartment.com](http://www.brisbane-apartment.com)

January 2014

# News Corp Australia

## SUBMISSION TO QLD LEGAL AFFAIRS AND COMMUNITY SAFETY COMMITTEE REGARDING THE *PROPERTY OCCUPATIONS BILL 2013*

23 JANUARY 2014

### INTRODUCTION

News Corp Australia welcomes the opportunity to make a submission to the Queensland Parliament's Legal Affairs and Community Safety Committee inquiry into the *Property Occupations Bill 2013* (the Bill).

Our concern regarding the Bill is confined to the matter of the non-disclosure of price guides associated with properties to be sold by auctions. Of particular concern is the 'clarification' included in the Explanatory Memorandum of the Bill regarding section 214 and 216, particularly section 216(2), that the non-disclosure of price guides includes in advertising 'or otherwise' including editorial.

News Corp Australia believes that the provision of price guides for properties offered for sale at auction should not be prohibited. Rather, News Corp Australia recommends that a price guide for a property to be sold by auction should be able to be disclosed, including in advertising and editorial. It would be appropriate that the agent would need to be able to, upon request, substantiate the price guide with market analysis or other material showing how the price guide for the property was decided.

Information, including price guidance, is highly valued by consumers and is an important aspect of an efficiently operating market. Such information should not be unnecessarily restricted. To do so would be to apply regulation needlessly; and likely result in unintended consequences including an uneven playing field and market inefficiencies, and risks infringing freedom of speech.

Given the above we believe that the goal of the Bill as stated by the Attorney General, being '*positive red tape reduction reforms that support industry growth, but also maintain a high level of protection for consumers*<sup>1</sup>' is best served by allowing the use of price guides for properties being offered for sale by auction. Further, the key objective of the Bill in advancing 'freedom of enterprise in the market place' is also better served by allowing the use of price guides.

This submission is structured as follows:

1. The benefits of disclosure of price guides, including in advertising and editorial
2. The consequences of prohibiting disclosure of price guides
3. Recommendation

---

<sup>1</sup> <http://jarrodbleijie.com.au/news/pamda-drafts-released>

News Corp Australia is a publisher of real estate advertising and real estate editorial across various metropolitan and community newspapers in Queensland, and holds a major investment stake in REA Group Limited (REA) which operates Australia's market leading property advertising website realestate.com.au.

In our view we are well positioned to recommend that real estate agents should not be prohibited from providing a price guide, including for properties offered for sale by auction, and that price guide information should not be prohibited from being advertised or incorporated into editorial content.

## **1. THE BENEFITS OF DISCLOSURE OF PRICE GUIDES, INCLUDING IN ADVERTISING AND EDITORIAL**

### Proposal in anti-consumer as price guidance information is highly valued by consumers

Consumers and prospective buyers value price guide information highly. This is evidence by surveys undertaken by REA and News Corp Australia. Specifically, the results of an REA survey<sup>2</sup> shows that prospective buyers are increasingly inclined to pass over a property where there is no indication of price range – with 66 per cent of potential purchasers saying that they will not pursue a property if a price is not displayed. Similarly, survey data from News Corp Australia shows that most important real estate related information in a property section of a newspaper is details of property prices.

### Price guide information is an important aspect of an efficiently operating market

The free flow of information is an important element of an efficiently operating market. The availability and provision of price guide information – particularly in advertising – supports the efficient allocation of resources in the market as it assists consumers to efficiently allocate their time by offering a filter for analysis and decision making, and therefore assists agents to efficiently allocate their time by having an 'informed' market. As the evidence above shows, consumers and potential buyers value that information highly, and are willing to not pursue a property if a price is not displayed.

To contemplate prohibiting that free flow, for a sub-section of the market (properties offered for sale at auction) will produce outcomes that result in the inefficient allocation of resources for all parties. Indeed such price guides are a fundamentally important part of advancing one of the key objectives of the Bill – namely the need to promote freedom of enterprise in the market place and effective functioning markets. We outline some of the consequences that would likely result from the prohibition of price guides at Section 2 of this submission.

### The ability to disclose price guide information gives real estate agents choice

A substantial benefit of the ability to disclose price, including in advertising and editorial, is the choice that it provides real estate agents. Rather than a prohibition – which places the lowest common denominator 'rules' on every real estate agent, preventing all agents from providing price guides relating to auction properties – it allows agents, in conjunction with vendors, to choose

---

<sup>2</sup> <http://www.news.com.au/finance/real-estate/nsw-real-estate-experts-john-cunningham-john-mcgrath-andrew-winter-slam-qld-proposal-to-ban-price-guides-on-properties-for-sale/story-fnd91nhy-1226776840904>

whether they to disclose price guides, particularly in advertising and editorial, on a property-by-property basis.

Notwithstanding this, it would also enable real estate agents who, in conjunction with vendors, decide not to disclose a price guide, to continue to provide a notional price to real estate portals.

### Price guidance information is an important part of freedom of information and freedom of speech

Importantly, News Corp Australia believes that the availability of price guide information in advertising, and particularly editorial, is an important element of freedom of information and freedom of speech. As you will be aware, these freedoms are fundamental to News Corp Australia's business and operations, and we cannot countenance rules which infringe on these in any way.

## **2. CONSEQUENCES OF PROHIBITING PRICE GUIDES**

### A solution in search of a problem

It is not apparent to News Corp Australia that there is a 'problem' that requires this 'solution,' therefore to progress with this prohibition would be to apply regulation needlessly.

The Explanatory Memorandum to the Bill does not articulate a problem, nor does it provide evidence to substantiate a problem and justify the change from the existing provisions which do not prohibit the disclosure of price guides.

Rather the Explanatory Memorandum includes a single sentence regarding the change from the legislation currently regulating the real estate industry, the *Property Agents and Motor Dealers Act 2000* (PAMDA), and the Bill. It states:

*'Price guides at auction are banned: The Bill (clauses 2014 and 216) clarifies that a price guide for a property to be sold by auction is not to be disclosed, whether in advertising, when asked by a potential bidder, or otherwise.'*<sup>3</sup>

Indeed it is noteworthy that in the majority of proposed amendments it covers, the Explanatory Memorandum provides a rationale for the amendment and the explanation of the problem it is seeking to address, but it does so for the amendment on price guides.

Some of the key principles and building blocks of good public policy making are articulation and evidence of a problem. These do not seem to have been met in making the prohibition for price guides, and therefore should not be progressed. Of further concern, is that sub-optimal outcomes are often experienced by all parties as a result of unsubstantiated policy making.

Given the importance of price guides to consumers, and the lack of evidence of a problem, we believe that real estate agents should not be prohibited from providing a price guide, including for properties offered for sale by auction, and that price guide information should not be prohibited from being advertised or incorporated into editorial content.

---

<sup>3</sup> Page21, <https://www.legislation.qld.gov.au/Bills/54PDF/2013/PropertyOccupB13E.pdf>

### Prohibition of disclosure of price guides results in an uneven playing field

Prohibiting real estate agents and auctioneers from disclosing price guides for properties offered for sale by auction unduly restricts real estate agents disclosing data but does not restrict other non-agent commercial data providers that also use historical property data. To look at this from a different angle, preventing real estate agents from disclosing price guidance gives a 'leg up' to other commercial data providers who are not real estate agents and not subject to the provisions of the Bill. There is nothing to stop other data providers – who would use the same or similar data to the real estate agents – providing price guide information to the market – unimpeded – about properties offered for sale by auction. We make this point to illustrate the absurd outcome resulting from the legislation.

We do not urge the inclusion of other data providers within the scope of the Bill. Rather, we believe this is a sound reason as to why the provision of price guides for properties offered for sale at auction should not be prohibited.

### Prohibition of disclosure of price guides results inefficient allocation of resources

As outlined in Section 1 previously, applying a prohibition to the the free flow of information for a sub-section of the market (properties offered for sale at auction) will produce outcomes that result in the inefficient allocation of resources for all parties.

Some possible scenarios include consumers and potential buyers having to source price guide information from multiple, potentially obscure or currently unknown sources and having to invest more time in doing so; taking this further, perhaps those sources are other data providers in the market who may charge for price guide information rather than it being provided in advertising for the property being auctioned, imposing an additional cost on the consumer as well as the time invested. Perhaps that potential buyer also approaches the agent to try to find out more price information, which the agent is unable to provide, with more of the potential buyers time taken in attempting to ascertain if it is worthy of pursuing – or not – and the agent has invested time and still the potential buyer has no price guide by which to apply to first filter – is this property in the ball park of affordability? This is a substantial inefficiency caused by a potential price guide prohibition.

### Prohibition of disclosure of price guides results in an obtuse outcomes

#### *i. Experts in the field prohibited from providing information*

It seems obtuse to prohibit real estate agents – experts in their field, relied upon by the vendor as a source of robust data, and with skin in the game – from disclosing price guide information to the market, whether in advertising or editorial or otherwise. This is particularly the case when real estate agents are subject to consumer protection legislation, including fair trading provisions, which address false and misleading activities. It is more efficient for complaints to be on an exceptions basis rather than applying lowest common denominator prohibitions to the entire sub-section of the market – particularly when there is a lack of articulation of a 'problem'.

*ii. Best interests of vendor may not be able to be satisfied*

Another contradictory outcome is that if the prohibition is realised, while a vendor's best interest could be served by disclosing a price guide, the agent would be prohibited from doing so.

Similarly, vendors who want to disclose price guide information – including in advertising and editorial coverage – regarding a property being offered by auction are prohibited from doing so.

*iii. Artificially skew the market towards fixed price sales*

A prohibition on disclosure of price guides for properties being offered for sale at auction may also artificially move, or skew, sellers and buyers into fixed price sale/negotiated price arrangements solely because they are unable to provide price guide, or advertise their property adequately, due to the prohibition. They may also miss out on editorial coverage, and therefore exposure, if a price guide is not able to be used.

### 3. RECOMMENDATION

News Corp Australia believes that the provision of price guides for properties offered for sale at auction should not be prohibited.

News Corp Australia recommends that a price guide for a property to be sold by auction should be able to be disclosed, including in advertising and editorial.

It would be appropriate that the agent (or auctioneer) would need to be able to, upon request, substantiate the price guide with market analysis or other material showing how the price guide for the property was decided.

#### Recommended approach to amending the Bill

#### **216 Real estate agent not to disclose reserve or other price**

- (1) This section applies if residential property is to be, or may be, offered for sale, whether or not by auction (offered property).
- (2) If the offered property is to be offered for sale by auction, the real estate agent must not disclose to a person other than a person acting for the seller in relation to the sale—
  - (a) the reserve price set for the offered property; or
  - (b) an amount the property agent considers is a price likely to result in a successful or acceptable bid for the offered property **[DELETE THE HIGHLIGHTED TEXT]** ; or
  - (c) a price guide for the offered property. **[DELETE THE HIGHLIGHTED TEXT]**

Maximum penalty—540 penalty units.

- (3) If the **[DELETE THE HIGHLIGHTED TEXT]** **property is not to be offered for sale by auction and the** seller has instructed the real estate agent not to disclose the price at which the seller is willing to sell the offered property, the real estate agent must not disclose to a person, other than a person acting for the seller in relation to the sale—
  - (a) an amount the property agent considers is a price likely to result in a successful or acceptable bid for the offered property; or
  - (b) a price guide for the offered property.

Maximum penalty—540 penalty units.

- (4) If a real estate agent gives a copy of a comparative analysis or a written explanation (market information) to a seller under section 215(2), the real estate agent must not give the market information to a person without the seller's written approval.

Maximum penalty—540 penalty units.

**[ADD HIGHLIGHTED TEXT BELOW]**

- (5) The real estate agent does not commit an offence against subsection (2)(b) if the real estate agent, with the seller's approval, gives a price guide to any person for the a property to be offered for sale by auction, based on a genuine belief supported by market analysis.

22 January 2014

Property Occupation Bill 2013  
Submission 022



Research Director  
Legal Affairs and Community Safety Committee  
Parliament House  
George Street  
BRISBANE QLD 4000

Queensland Division

Suite 202, Level 2, 131 Leichhardt St,  
Spring Hill QLD 4000  
PO Box 106, Spring Hill QLD 4004  
T 07 3832 3139  
F 07 3839 0438  
E qld@api.org.au

Dear Sir/Madam,

Thank you for the opportunity to submit in relation to the changes to the former *Property Agents and Motor Dealers Act*. Please accept our apologies for the delay in providing our submission.

As the Committee may be aware, certain requirements and documentation were added to the process of property transactions in Queensland by previous Queensland Governments to protect the consumer. Some of these were the result of what became known as “two tiered marketing” in Queensland where uninformed purchasers were pressured to make quick decisions about purchasing property, often with no recourse.

As a result a previous Queensland Government announced cooling off periods and forms such as Form 27 and Form 30 were created. These forms ensured that purchasers were informed about how to access independent legal and property advice and they also gave purchasers information about how much each party involved in the sale would benefit financially.

For most Queenslanders, property represents the largest investment of their lives. As such there is a genuine need for those purchasers, particularly those who perhaps are not the most informed purchasers, to have protection afforded to them and to ensure that they are not taken advantage of by those who would seek to benefit in the way that those involved in the previous “two tier marketing” once did. There is no equality of bargaining between a consumer and a developer of a large scale development. The maxim ‘caveat emptor’ arose at a time when transactions were much less complex.

### Form 30C

#### Warning statement

We understand that the new legislation seeks to remove the need for Form 30C (a Warning Statement) to be included as a separate document. Currently, Form 30C must be brought to the attention of any purchaser by the seller or agent. Whilst we are unsure of the exact reason for this change, we understand that real estate agents have reported that contracts have been terminated when the legal requirements around this particular form have not been adhered to.

We understand that a statement along the same lines as the Form 30C will form part of the new contract but would query why such an important warning statement is being removed as a stand-alone document attached to the contract when what it seeks to achieve is commendable. That is that a purchaser has received appropriate legal advice about the contract they are to sign and that they are paying a fair and reasonable price for the property they are purchasing.

Instead of abolishing Form 30C as a stand-alone document attached to the contract, it could be amended to require compliance in substance rather than in form as under current legislation.

[www.api.org.au](http://www.api.org.au)

## Form 27C

### Selling agent's disclosure to buyer

The purpose of this form is to make a purchaser aware of relationships that the selling agent has with persons to whom they refer the purchaser to, and of benefits that the selling agent and other people receive from the sale. It must be completed by the following:

- Real estate agent
- Real estate salesperson acting for a real estate agent
- Property developer
- Property developer salesperson
- Person acting as a real estate agent although not authorised by a licence to do so
- Person acting as a property developer although not authorised by a licence to do so

We understand the requirements around the need to disclose have been amended in the new legislation. The Institute believes that any party involved in the sale of property in Queensland should be required to make a statement to the purchaser about who may benefit from the sale and how those parties are related. Failure for this information to be available to the purchaser could lead them to rely on advice from a related party or from a party who may be financially involved in the sale.

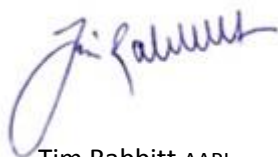
The API also understands that certain types of licencing and registration requirements may be removed as part of the changes. We understand that property developer salespersons are part of those proposed changes. With the recent collapse of the proposed National Occupational Licensing scheme, the API would prefer to see those involved in the sale of real estate in Queensland licensed by the State.

The Australian Property Institute understand that a number of the changes encompassed in the new legislation have been made in consultation with various property industry bodies in Queensland and with a desire to reduce the administrative burden.

The Australian Property Institute would like to see the intent of the current legislation in Forms 27C and 30C retained in essence by appropriate amendments for the benefit of the community at large.

Should the Legal Affairs and Community Safety Committee wish to discuss the contents of this submission please do not hesitate to contact Andrew Bell at the Australian Property Institute.

Yours sincerely



Tim Rabbitt AAPI  
Queensland President.

**SUBMISSION TO LEGAL AFFAIRS AND COMMUNITY SAFETY COMMITTEE**

**PROPOSED CHANGES TO THE  
LAWS IN QUEENSLAND RELATING TO  
MOTOR DEALERS AND PROPERTY AGENTS**

**January 2014**

## CONTENTS

	Page
1. INTRODUCTION	3
1.1 Background to this submission and overview.	3
1.2 About Caxton Legal Centre Inc. and our client base	3
2. EXECUTIVE SUMMARY OF OUR RECOMMENDATIONS	6
3. CAXTON'S RESPONSE TO THE PROPOSED NEW LEGISLATIVE REGIME	7
3.1 The focus of this submission and introductory comments	7
3.2 PAMDA's strengths and weaknesses	8
3.3 The benefits contained in the Codes of Conduct	9
3.4 The new <i>Motor Dealers and Chattel auctioneers Bill 2013</i>	10
3.5 The new <i>Debt Collectors (Field Agents and Collection Agents) Bill 2013</i>	11
3.6 The new <i>Property Occupations Bill 2013</i>	12
3.7 Elder abuse and real estate agents – a note	13
4. CONCLUSION	14

## 1. INTRODUCTION

### 1.1 Background to this submission and overview

Caxton Legal Centre Inc.(Caxton) has been involved in providing legal advice to clients about disputes involving motor dealers, real estate agents and collection agents, fair trading practices and related consumer rights for over 35 years. We are therefore uniquely placed to comment on this review.

We endorse the reduction of unnecessary 'red tape' and any consolidation of legislation that improves consumer protection and enables members of the community to more easily access, understand and invoke the protections of relevant laws.

Proper regulation of motor dealers and property agents is vital, especially when it comes to dealings involving vulnerable people. Unfortunately, we have seen many occasions where our clients have suffered at the hands of unscrupulous operators in this field. We therefore urge the government to preserve and strengthen the consumer protections, which currently exist under the *Property Agents and Motor Dealers Act 2000 (Qld)* [PAMDA] and the existing applicable Codes of Conduct, in any new legislative framework.

In particular, we believe that the broader existing statutory warranty regime, which provides for both A and B class used cars<sup>1</sup> should be preserved in any new legislative regime. (The new provisions provide only for A class motor vehicles to be covered by statutory warranties.<sup>2</sup>) We also favour the extension of the laws relating to cooling off periods to cover all car sales.

Furthermore, the "general rules of conduct" statements contained in the existing Codes of Conduct, which operate in tandem with PAMDA, affirm core principles that should govern fair trading practices in this field and we submit that these general rules of conduct need to be preserved in any new legislation. In the proposed draft Bills, only some aspects of various conduct related provisions have been retained. The Bills contain provisions stating that "a regulation may provide for conduct standards of ..."; however, there does not seem to be any specific provision for Codes of Conduct to be introduced as part of this reform process.

The existing Codes have been very important (and accessible) tools, which, when used by advocates on behalf of disadvantaged clients, have assisted in the speedy resolution of disputes. The draft Bills should be amended to include (or at least make provision for future inclusion of) these core conduct "Code" rules.

### 1.2 About Caxton Legal Centre Inc. and our client base.

Caxton is Queensland's oldest non-profit, community-based, legal service and is staffed by 24 staff members and approximately 200 volunteer lawyers and law students. Caxton operates free legal advice and information services, 3 specialist legal casework services (including a consumer law clinic and a specialist program for abused and exploited seniors – including those exploited through financial abuse), 3 clinical legal education programmes, general community

---

<sup>1</sup> See the definitions in Schedule 2 of PAMDA

<sup>2</sup> See section 3 of Schedule 1 of the Motor Dealers and Chattel Auctioneers Bill 2013.

legal education services and social work support services. Caxton also undertakes law reform activities in areas of law relevant to the community we serve.

Our goal is to promote 'access to justice' and we provide over 12,000 legal information and advice services each year to both individuals and other community organisations. We specialise in 'poverty law' and the majority of our clients are economically and/or socially disadvantaged in some way, with at least a third receiving Centrelink benefits. (Apart from giving referrals to private firms, we do not give assistance in commercial matters or cases involving major property disputes where clients can afford private legal representation.)

Caxton workers and volunteers have considerable experience dealing with clients who have literacy problems, cognitive/mental health problems (and other disabilities), and clients with a limited understanding of our legal system - especially some of our clients from non-English speaking backgrounds. These are often the clients who are most disadvantaged and exploited in consumer transactions.

We have extensive experience assisting other groups of vulnerable clients. Many of our clients are living in chaotic circumstances in temporary or insecure accommodation. Our clients who are on Centrelink benefits (including sole parents) and those only working part-time on low wages constantly struggle to make ends meet. These various groups of clients often get into difficulty when they are trying to buy a cheap second hand car, rent a flat, or deal with outstanding debts and debt collectors. It is worth noting that we have observed that many people who are looking for work seem to try to get a car in order to seek/secure employment, even though they may not actually be able to afford a vehicle unless they do then secure employment. The PAMDA regime affects many of these clients.

In the last 3 years, we have given advice and/or information on approximately 2100 occasions about consumer disputes – 653 times in relation to fair trading practices. We have also given advice in tenancy matters on 719 occasions. Unfortunately, it is not possible to use our data entry system to identify the exact number of cases that involved PAMDA; however, our free advice session coordinators have confirmed that we generally give legal advice relating to PAMDA matters every week. It is clear that the current laws in this field are still problematic and inadequate. Caxton is very concerned about any reduction in the protections currently available under PAMDA.

## 2. EXECUTIVE SUMMARY OF SUGGESTED REFORMS

We are suggesting a number of key reforms. A summary of all our recommendations follows.

- I. There should be no reduction in the protections currently offered to consumers under the PAMDA regime as a result of the proposed reforms.
- II. If PAMDA is to be broken down into the new proposed Acts, the existing consumer protections contained in PAMDA and the Codes, together with any further improvements identified as a result of this review, need to form part of any new legislative regime.

- III. The proposed draft Bills need to be amended to clearly state that regulations may provide for “Codes of Conduct” to be introduced to accompany each of the new Acts.
- IV. The existing Codes of Conduct, which operate in tandem with PAMDA, need to be mirrored in replica (but renamed) Codes introduced to accompany any new legislation.
- V. If the Codes are not going to be re-introduced, as a minimum, the “general rules of conduct” statements contained in the existing PAMDA Codes of Conduct, need to be preserved in the relevant Acts themselves.
- VI. The broader PAMDA existing statutory warranty regime should be preserved in any new legislative regime. Specifically, the broader PAMDA existing statutory warranty regime, which provides for both A and B class used cars<sup>3</sup> should be preserved in any new legislative regime.
- VII. The Statutory Warranties should be contained in the body of the Motor Dealers and Chattel Auctioneers Bill/Act so that they are more easily accessible to anyone referring to the Act.
- VIII. The laws under the Motor Dealers and Chattel Auctioneers Bill/Act relating to cooling off periods should be extended to cover all sales – especially motor vehicles sold on consignment. If this is not to occur, more is required to ensure that buyers actually know and understand when a cooling off period does not apply.
- IX. When motor vehicles are being sold on “consignment”, dealers and auctioneers must take steps to ensure that a buyer understands exactly what the term consignment means.
- X. Further public debate should occur in relation to the process whereby a motor dealer/ chattel auctioneer may be monitored for criminal activity for the purposes of this legislation. Further public debate should also occur in relation to the process whereby a debt collector may be monitored for changes to their criminal history for the purposes of this legislation.
- XI. We oppose the introduction of the negative licencing regime for collection agents and believe that the current licencing regime should be retained.
- XII. We oppose waivers of the 5 day cooling-off period under the *Property Occupations Bill 2013 (POB)*.
- XIII. The protections currently offered under the Property Agents and Motor Dealers (Real Estate Agency Practice) Code of Conduct should be extended under the new legislative framework. In particular, protections are needed regarding the final inspection of property, prompt repair and maintenance work, the use of confidential recorded information, and dealings with people who cannot understand documents. The

---

<sup>3</sup> See the definitions in Schedule 2 of PAMDA

prohibition on high pressure sales tactics, harassment and unconscionable conduct should continue to be included in a new Code or, at least should be included in the relevant Act/s.

- XIV. The government, in addressing these matters, should consider this law reform issue in a whole-of-government approach - specifically through education in our community generally.

### 3. CAXTON'S RESPONSE TO THE PROPOSED NEW LEGISLATIVE REGIME

#### 3.1 The focus of this submission and introductory comments

The government is proposing to replace PAMDA with 4 new Acts. Our response is focused on the legislation dealing with motor dealers, debt collectors and real estate agents – that is, the *Property Occupations Bill 2013 (POB)*, the *Motor Dealers and Chattel Auctioneers Bill 2013 (MDCAB)* and the *Debt Collectors (Field Agents and Collection Agents) Bill 2013 (DCB)*. This is because we are commenting on the provisions most relevant for our client group.

PAMDA is a large Act of over 500 pages and, arguably, it is difficult for a self-represented litigant to access, understand and use this legislation and the various associated Regulations and Codes. We appreciate that the current framework including this large Act, together with the regulations (82 pages), and the 6 Codes (over 125 pages), can seem unwieldy.

We acknowledge there is some benefit in the creation of 4 much smaller and discrete, appropriately named Acts governing each separate area of law and commercial practice. This may make it easier for self-represented litigants to find the law that governs their situation. PAMDA, because of its size, was a difficult Act to use. However, we are very concerned about any proposal to eliminate the accompanying "Codes of Conduct" (or at least the core elements of the codes) governing people who work in the particular roles affected by this legislative regime. If PAMDA is to be broken down into the new proposed Acts, the protective elements from PAMDA and the Codes, together, need to form part of the new Acts.

#### 3.2 PAMDA's strengths and weaknesses

PAMDA contains many very important protections from a consumer protection point of view. The 'suitability' restrictions placed upon who is allowed to obtain a relevant license under PAMDA are important and arguably have made it more difficult for inappropriate people to obtain licenses. The way in which the legislation includes specific named offences and penalty provisions is also very useful for our clients because it assists in the identification of breaches of the law. The inclusion of definitions/explanations of time limits and important terms, such as "written-off vehicle", "restorable vehicle", "statutory warranty", "warranty period", "cooling off periods" "defects" etc. and the clear provisions in PAMDA dealing with misleading and unconscionable conduct have been particularly useful. The title guarantee provisions also are incredibly important for consumers.

Some of PAMDA's most important consumer protection provisions relate to the rules about:

- statutory warranties and obligations to repair vehicles;

- licensing (and certificate holder) qualification requirements;
- mandatory written notice, information and warning statement provisions;
- written agency appointments;
- disclosure of interest and conflict of interest rules;
- the supervision of relevant offices;
- employee supervision;
- defined cooling off periods;
- referral for independent advice rules;
- restrictions on commissions (and reference to a calculation formula);
- rules for the keeping of trust accounts and other financial records;
- announcement and signage provisions;
- exclusive/sole agency arrangements and consequences;
- rules about terminating relevant contracts;
- the Claim Fund and the making of claims;
- disciplinary action and complaints;
- investigation powers;
- the Tribunal's jurisdiction and powers, and
- the Codes of Conduct,

These features all strengthened consumer protection in Queensland. Similarly, the inclusion of notes in the legislation giving examples of what particular provisions could mean is very useful for anyone referring to PAMDA.

However, while PAMDA clarified rules around cooling off periods, which was a great improvement, clients who purchased vehicles from motor dealers on consignment (and in certain other situations), unfortunately, missed out on the benefits of a cooling off period. We believe that cooling off periods are important in all transactions involving the purchase of any significant property, such as a motor vehicle. Currently, it is the case that customers are simply meant to be advised through signage that vehicles sold on consignment do not attract a cooling off period.<sup>4</sup> We support the introduction of cooling-off periods for all relevant transactions.

### 3.3 The benefits contained in the Codes of Conduct

We believe that the government needs to preserve and strengthen the consumer protections, which currently exist under PAMDA and the existing applicable Codes of Conduct, in any new replacement Acts. At this stage, we are not aware that any particular Codes are proposed and it seems from the wording in the draft Bills, that specific Conduct Codes are not anticipated; instead conduct provisions simply may be contained in the general regulations, which have yet to be drafted. In principle, we support the use of Codes in this field.

There are currently 6 relevant Codes of Conduct, which mirror each other in general terms. One of the appealing things about the Codes is that each Code is of a relatively manageable size and can be read and understood fairly quickly. Each code clearly states that the Code is "mandatory". The 'General Rules of Conduct', in particular, provisions 5-18 contained in each

---

<sup>4</sup> See Regulation 26 PAMD Regulations 2001 and Code provision 31 PAMD(Motor Dealing Code of Conduct) Regulation 2001

Code, are, in our experience, very important for consumers. Increased protection comes from the provisions stating that the dealer, the real estate/letting agent, the auctioneer, the property developer and the collection agent:

- are fiduciaries and have fiduciary obligations;
- must act honestly, fairly and professionally;
- must act in the client's best interests;
- must act in accordance with the client's instructions;
- must keep the client informed of developments;
- must have a reasonable knowledge of the Act and the Code;
- must ensure their employees comply with the Act and the Code and must ensure they don't falsely represent their role;
- must not engage in conduct that is fraudulent or misleading;
- must not use high pressure tactics, harassment or unconscionable conduct;
- must not falsely claim membership or endorsements;
- must not take appointments where there is a conflict of interest (unless a written disclosure is first made; and
- must not solicit clients or customers through advertisements or other communications that are known to be false or misleading.

The specific rules that are then set out in each Code reflect very real issues that tend to cause problems for Caxton clients. The Codes provide protections in many situations. So, for example, rule 21 of the *Property Agents and Motor Dealers (Motor Dealing Practice Code of Conduct) Regulation* sets out that a dealer must not knowingly make a false or misleading representation about warranties sold, the nature of documentation and terms, the availability of finance, or the condition, description or fitness for purposes of a car and accessories etc. Similarly, rule 30 specifies that "a motor dealer acting for a client must obtain the maximum sale price for the client's used motor vehicle". If the dealer is selling a car on consignment, the dealer must also give a customer a written notice confirming this and advising "that there is no statutory warranty or cooling-off period under the Act in relation to (that) motor vehicle".

Before the PAMDA regime came into operation, consumers had a lot of trouble trying to take remedial action if they had been on the receiving end of improper practice by a dealer.

Although this has been an issue for a long time, we have encountered quite a few cases over the last year whereby people who have no real capacity to pay for vehicles are, nevertheless, entering into contracts to buy cars from dealers. Similarly, we have seen some cases where clients assert that they have been pressured into buying investment units when they have no real prospect of paying the loans on these properties. We have seen other cases where older people have felt pressured into entering into an exclusive real estate listing, which has then caused difficulty. It is very important to have strong Codes of Conduct, which help to stop these sorts of situations. The Codes specifically state that the agent/dealer (et al) "...must not engage in high pressure tactics, harassment or unconscionable conduct in the conduct of ...practice".<sup>5</sup>

---

<sup>5</sup> Section 15 Property Agents and Motor Dealing Practice Code of Conduct) Regulation 2001.

Occasionally, we have seen clients, especially retirees, who have had difficulties as a result of their dealings buying a residence for retirement from a property developer. (It should be noted that for many of our older clients, their only asset is their family home and many of our retirees live on Centrelink benefits.) Through our work with seniors in our *Seniors' Legal Advice and Support Service* (SLASS), we have observed that these types of disputes sometimes involve cases of elder abuse. This is particularly concerning, because these vulnerable, older clients already face significant systemic barriers when they try to access legal advice and/or use the legal system. Unfortunately, we have seen a number of cases where older people have been especially vulnerable in their dealings with real estate agents in relation to listings and property sales. It is for this reason that we support the maintenance of a strong Code of Conduct that governs real estate agents.

We have also seen a number of other clients from culturally and linguistically diverse (CALD) backgrounds who have had difficulties in their dealings with motor dealers and associated financiers. Dealing with written contracts and any written documentation, especially lengthy documentation using technical jargon, is very difficult for many of Caxton's clients. There often appears to be a real gap between the agreements that clients thought they were entering into on the basis of verbal conversations with dealers or their representatives and the documents that they have actually signed without fully understanding the terms – or in some cases having even read. Unfortunately, the outcome of disputes turns on 'who is believed'. Our clients are often very poor at articulating their stories and/or do not have the confidence to take matters to the Queensland Civil and Administration Tribunal (QCAT)/Courts. Legal Aid in civil matters is rarely given and CLCs have very limited capacity to undertake court casework.

We have observed that certain migrants from some African communities have been experiencing particular difficulties in relation to motor vehicle purchases. In order to highlight the problems faced by CALD clients, it is worth giving some examples of relevant scenarios that we have encountered. We recently advised in a situation where, as we understand things, a wife was present with a husband during part of the purchase and associated finance deal of a motor car. The wife spoke no English and could not read the documents that were written in English; however, she ended up as a joint borrower without understanding the true nature of the transaction.

The Codes of Conduct provide some protection to these vulnerable clients in their dealings with motor dealers.

Even if the Codes are, in practice, sometimes being breached, they are important from an aspirational point of view and we think that fair practice in the relevant business areas has improved since the PAMDA regime was introduced.

Each of the Bills provide for the introduction by regulation of prescribed conduct provisions<sup>6</sup>. As already stated, we would support the use/adoption of the relevant Conduct Code in its current form.

#### 3.4 The new *Motor Dealers and Chattel Auctioneers Bill 2013 (MDCAB)*

---

<sup>6</sup> Section 235 POB, Section 94 MDCAB, Section 39 DCB

The MDCAB, mirrors many sections of PAMDA and contains many of the same licensing, suitability, supervision, employee, appointment and practice rules. We endorse these types of restrictions.

#### 3.4.1 Statutory Warranties

We oppose the reductions in the application of statutory warranties. Our clients regularly need to rely on warranties and they are an important tool in terms of consumer protection. We are regularly approached by clients who need legal advice about disputes involving motor vehicles that they have purchased from motor dealers. Many need advice about their entitlements under the statutory warranty regime and we certainly periodically given advice about cars that are over 10 years old or have travelled over 160,000 km – that is B class vehicles. (Our clients often can only afford older model vehicles).

Because our clients are often quite poor, they tend to be fully committed in terms of their debt levels. When suddenly faced with a major expense – for example, to repair a vehicle, this can cause our clients considerable hardship – especially if they need a car to get to work. (Many of our clients have no access to reliable public transport.) If a client has only just purchased the vehicle when it breaks down, they are better placed if they can rely on a warranty. (Unfortunately, it has been our experience that clients often have trouble getting the vehicle repaired quickly under warranty anyway. If a dispute ensues, the client may need to end up paying for a repair themselves and then chasing recovery of the cost via QCAT.)

It is unclear why the Statutory Warranties have been moved to become Schedule 1 in this Bill. In our view, containing them in the body of the Act makes them more accessible for self-represented litigants to identify.

#### 3.4.2 Cooling off periods

We believe that the reforms could have extended cooling off periods. For disadvantaged clients who are more vulnerable to making poorly considered on-the-spot decisions, longer and more extensive cooling off periods would be of great value.

#### 3.4.3 Criminal History Checks

We note that there seems to be an extension of the role of the Commissioner of Police giving information about a dealer's criminal history under the new draft Bill.

Interestingly, part 2 – division 5 – seems to expand the way in which a motor dealer or chattel auctioneer may be monitored for criminal activity links. Section 27 provides for the Commissioner of the Queensland Police Service, who "reasonably suspects" that a licence holder or person nominated to get a license (under this section of the Bill) has a change to their criminal history" to notify the chief executive of this criminal history change.

Currently sections 32-33 of PAMDA simply require a criminal check to be done when someone applies for a license or applies to renew a license. Caxton is always concerned about the

protection of individual civil liberties and any proposal for the monitoring of a person's criminal history, presumably by database between departments, is a matter of concern to us. The way in which this would occur is not detailed in the bill. We consider that this issue should be a matter for further public comment.

### 3.5 The new *Debt Collectors (Field Agents and Collection Agents) Bill 2013 (DCB)*

Like the MDCAB, the DCB, largely mirrors the relevant portion of PAMDA that deals with debt collectors. It sets out licensing, suitability, supervision, sub-agency and appointment provisions. It lists QCAT's powers and clearly sets out prohibited conduct. Sections 36 – 38 (unlawful entry, misrepresentation, and impersonating debt collectors) mirror the provisions of PAMDA and remain incredibly important provisions.

#### 3.5.1 Negative licencing regime for collection agents

We are concerned about the introduction of the negative licencing regime for collection agents. Section 19 of DCB provides for automatic authorisation for persons to engage in debt collection activity that is not conducted face-to-face with the debtor.

The majority of clients who seek advice from Caxton in relation to debt collection activity do so because of they feel harassed by collection agents contacting them repeatedly by telephone. Clients also regularly complain that collection agents have spoken to them aggressively by telephone or have provided misleading information in relation to debts.

While we recognise that section 19 requires that a person engaged in collection activity must be suitable to perform a debt collection activity under part 6 of the DCB, we are concerned that unsuitable collection agents will become common place in the collection industry. This concern arises because it is likely that unsuitable collection agents would only come to the attention of Chief Executive following a complaint about their conduct or suitability. The negative licencing regime will negatively impact on consumers.

#### 3.5.2 Code of Conduct

The current Code for collection agents sets out very specific rules about how and when agents can contact debtors. This includes, for example, a prohibition on agents speaking with a debtor's child – unless permission for this is given. These provisions of the Code need to be preserved.

#### 3.5.3 Criminal history checks

Although practice in debt collection appears, in our experience, to have improved over the last decade or so, it does remain an area where debtors are vulnerable and it is important to continue to carefully regulate this field. Here too, part 7 – division 2 – seems to expand the way in which a debt collector may be monitored for criminal activity links. Section 108 provides for the Commissioner of the Queensland Police Service, who "suspects on reasonable grounds that a person is a field agent or subject ....(and) there is a change in a person's criminal history" to notify the chief executive of this criminal history change.

We refer to our earlier comments about civil liberties. We consider that this issue needs to be a matter for further public comment.

### 3.6 The new *Property Occupations Bill 2013 (POB)*

Again, the POB contains many mirrored provisions currently contained in the PAMDA. The provisions about conflict of interest, disclosure, written documentation, written appointments, the giving of notices, listings, sole agency arrangements, acting in a client's best interests, the use of trust accounts, deposits, termination of contracts, cooling off periods, offences and penalty provisions are all extremely important.

#### 3.6.1 Cooling off periods

We note that the POB makes provision for the waiving or shortening of the 5 day cooling-off periods.<sup>7</sup> We are concerned that vulnerable people may feel pressured into agreeing to waiving or shortening cooling-off periods. From our perspective, it is very important for clients to be able to rely on a cooling-off period if they have made hasty, ill-considered decisions about purchasing property they cannot actually afford. (This could be particularly important if a client is experiencing emotional trauma or has a mental health condition that heightens a tendency towards impulsive behaviours.)

#### 3.6.2 Code of Conduct

Because we do not generally give legal advice in conveyancing matters, we have limited ability to comment on the 'sales' aspects of the Bill. Our clients' complaints about real estate agents most commonly relate to tenancy matters.

For example, we have advised many tenants who have been in dispute with the lessor/real estate agent about final cleaning costs and bond recovery. In the current Property Agents and Motor Dealers (Real Estate Agency Practice) Code of Conduct, there are very clear requirements about the "final inspection of rental property".<sup>8</sup> This includes a requirement that the "agent must give the customer a reasonable opportunity to attend to the thing." In our experience, real estate agents sometimes act prematurely in relation to cleaning and property removal, and thus prevent a tenant/s from attending to matters at reduced cost. Accordingly, this provision is very important from a tenant's perspective. There is a real need in any new legislative regime for a Code of Conduct to be created along the same lines as this current Code.

Rule 33 provides very specific guidelines for the inspection of property for rent, which, arguably is an important protection for tenants and owners alike. Rule 34 then mandates that a real estate agent must "promptly respond to" and address maintenance and repair issues. Delays in relation to maintenance repairs constantly cause problems for our tenant clients, so this sort

---

<sup>7</sup> Sections 166-167

<sup>8</sup> Section 39

of Code obligation is vital, even though there are other relevant provisions under the relevant tenancy laws.

There have been many problems with the improper use of tenancy databases in the past and the Tenants Union of Queensland has campaigned extensively about this issue. Reforms have been made over time; however, it remains important to ensure that tenants are not treated unfairly through any improper use of recorded information. Rule 41 of the current Code requires a real estate agent to ensure that recorded information is accurate and to immediately amend it where evidence is provided that it is inaccurate. One of the most important provisions from a tenancy perspective is contained in rule 41(1)(b), which states that the real estate agent must ensure that the information "if adverse to the client or customer, relates to a matter that is not trivial or is not a minor breach of a tenancy agreement". Examples are then provided of what is "not trivial". The ability to refer to these types of Code obligations enables advocates to assist tenancy clients who have been on the receiving end of bullying/retaliatory tactics by real estate agents. Unfortunately, we are aware of instances where this has happened.

Rule 15 of the current Code of Conduct gives examples of high pressure tactics, harassment and unconscionable conduct that are prohibited by the Code. Example three includes: "If it is reasonably apparent that a client or customer cannot understand relevant documents, taking unfair advantage of the client's or customer's lack of understanding." Given our earlier comments about our work with illiterate and CALD clients, this provision needs to be continued.

We have observed through our family law work that clients going through property settlement proceedings can be commercially vulnerable whenever the matrimonial home (or other property) has to be sold urgently. It is particularly important for separating spouses to be able to rely on ethical dealing practices with real estate agents. The current rule 17, which prohibits conflict of interest dealings, rule 21, which, in effect requires an agent to give accurate opinions about market sale prices or rent, rule 29 which mandates that the "real estate agent must obtain the maximum sale price for a client's property" and rule 30, which requires a real estate agent to give a client a genuine opportunity to obtain relevant independent professional advice or representation before appointing the agent are essential consumer protections in this type of situation. These are further examples of the need for a relevant Code.

### 3.7 Elder abuse and real estate agents – a note

Through our SLASS Programme, which focuses on elder abuse, we have observed that older people, in particular, can be very vulnerable in their dealing with others – including with real estate agents.

Once people are in their 70s and beyond they often will be coping with declining health and the associated difficulties of old age. They will also have additional stressors if they are carrying out onerous carer duties, caring for an aged spouse or sibling. Stress generally aggravates underlying health problems, and older people may have memory lapses, ranging from minor and occasional to significant and constant. Many older people simply will not take steps to enforce their rights because the stress of any conflict and/or litigation can aggravate all these

aspects of an older person's state of health. We have observed that older clients often lose their confidence and are often discouraged from taking action to enforce their rights because they are not regarded as being reliable enough witnesses.

Unfortunately, with the dramatic increase in the value of property in recent years, many older people whose sole asset is their family home have become targets both of their own families and of other people trying to acquire their property for development reasons.

We have encountered a couple of cases in the last year involving older people who were pressured into exclusive listings with particular real estate agents to sell their houses. The clients later changed their minds about the arrangements but had considerable difficulty extracting themselves from the listing arrangements. In two of those cases, our SLASS team used the Code of Conduct to assist the client to resolve the matter.

It is in these types of cases where a discrete, manageable Code of Conduct can be a very important tool.

#### 4. CONCLUSION

Because the law in this area, at least in our experience, is complex and is not generally understood by members of the public, any change to the law needs to retain the consumer protections that currently exist.

We support the reforms that strengthen the existing protections, but believe that the continuation of the protections set out in the existing PADMA Codes must be part of this overall reform package. Consumers are rarely in the dominant position when any commercial bargain is entered into. The availability of accessible, clear and practically useful Codes are one way for the government to equalize this gap. The consumer protections are particularly necessary as a way of protection vulnerable members of the community – the very clients who attend at Caxton Legal Centre Inc. who cannot afford to pay for private legal assistance or representation.

The government, in addressing these matters, should consider this law reform issue in a whole-of-government approach.- specifically through education in our community generally.

We are happy to discuss any aspect of this submission.

CAXTON LEGAL CENTRE INC.

24 January 2014



TheNewspaperWorks

29 January 2014

The Research Director  
Legal Affairs and Community Safety Committee  
Parliament House  
George St  
BRISBANE QLD 4000

By email: [lacsc@parliament.qld.gov.au](mailto:lacsc@parliament.qld.gov.au)

Dear Mr Hastie,

**Re: Submission regarding the *Property Occupations Bill 2013***

The Newspaper Works appreciates the opportunity to make a submission to the Queensland Parliament's Legal Affairs and Community Safety Committee inquiry into the *Property Occupations Bill 2013* (the Bill).

**About The Newspaper Works**

The Newspaper Works is a not-for-profit body established to promote the newspaper media industry in Australia. It was founded in 2006 by Fairfax Media, News Corp Australia, APN News & Media and West Australian Newspapers to pursue a number of industry objectives, including the promotion of newspapers and associated media as a powerful and influential medium. The organisation also provides research and marketing tools to fulfil its objectives. It is an advocate of strong, independent journalism, freedom of expression and freedom of the press.

**Executive Summary**

Our concern is limited to non-disclosure of price guides associated with properties offered for sale by auction – restricting them from being disclosed in advertising '*or otherwise*', including editorial.

Information, including price guidance, is valued by and important to consumers. If the Queensland Government was to limit the provision of this information – which we do not support – it would be applying regulation without a case being made for its application. This would likely result in sub-optimal outcomes for all market participants, including consumers, and would risk interfering with freedom of speech.

The Newspaper Works requests the Queensland Government does not require such a restriction and recommends the provision of price guides for properties offered for sale at auction should be able to be disclosed, including in advertising and editorial.

## Disclosure of price guides is beneficial

### *i. Information is an important part of efficient market operation*

Consumers and prospective buyers value price guide information highly as it assists them to decide which properties may fall within the broad scope of their price range, or not, and therefore how to allocate their resources and next steps in pursuing particular property/s. The provision of price guidance also allows efficient resource allocation on supply the side, as agents are interacting with more informed consumers.

### *ii. The ability to disclose price guide information gives real estate agents choice*

An ability to disclose price, rather than a prohibition, empowers vendors and agents with the ability to decide if price guidance is an appropriate pathway to take to inform consumers. By taking this approach, rather than preventing all agents from disclosing price guidance, it enables those agents and vendors who want to provide some information to the market to do so. This will allow vendors of properties to be auctioned to decide – and be free to – to have price guidance information included in advertising and editorial coverage.

An ability to disclose price would also enable real estate agents, in conjunction with vendors, to decide not to disclose a price guide, but provide a notional price to real estate portals for the purpose of search functionality.

### *iii. Price guidance information is an important part of freedom of information and freedom of speech*

The Newspaper Works and its members believe that the availability of price guide information in advertising, and particularly editorial, is an important element of freedom of information and freedom of speech. In the context of this proposal, we believe an individual has the right of free speech, and therefore should be allowed to answer a question of a journalist without potential legal penalty. As we have communicated previously across a range of fora, the freedom of free speech is fundamental to the workings of a democracy. Free speech not only underpins our political but the operation of the economy and specific businesses. The Newspaper Works considers any laws or rules that infringe on such rights as unconscionable. We do not suggest, of course, that an individual must answer a question of a journalist, or indeed a potential purchaser of a property, but only that they have the choice to do so within the bounds specified in a relationship with a vendor.

## Prohibiting price guides will result in sub-optimal outcomes

### *i. A lack of a problem that requires fixing*

It is unclear to The Newspaper Works and its members what the problem is that requires a prohibition of price guides for properties being auctioned. Therefore, it seems that to implement the prohibition would be to apply regulation unnecessarily.

The Newspaper Works notes a lack of detail accompanying the Explanatory memorandum which states, without reason, that the Bill *clarifies that a price guide for a property to be sold*

*by auction is not to be disclosed, whether in advertising, when asked by a potential bidder, or otherwise.<sup>1</sup>*

As there is a lack of evidence of a problem, and information is an important part of an effectively functioning market, we encourage the Queensland Government to allow price guidance, including for properties offered for sale by auction, and that price guide information should be able to be advertised or incorporated into editorial content.

*ii. The creation of an uneven playing field*

Prohibiting real estate agents and auctioneers from disclosing price guides for properties offered for sale by auction unduly restricts real estate agents disclosing data but does not restrict other non-agent commercial data providers that also use historical property data. To look at this from a different angle, preventing real estate agents from disclosing price guidance gives a 'leg up' to other commercial data providers who are not real estate agents and not subject to the provisions of the Bill. There is nothing to stop other data providers – who would use the same or similar data to the real estate agents – providing price guide information to the market – unimpeded – about properties offered for sale by auction.

We are not asking for other data providers to be included within the scope of the Bill. Rather, we believe this is a sound reason as to why the provision of price guides for properties offered for sale at auction should be allowed and not prohibited.

*iii. Inefficient allocation of resources*

A restriction of price guidance for properties for auction will affect only a segment of the property market. Those for sale by other means will not be affected at all. This will produce outcomes that result in the inefficient allocation of resources for all parties.

Some possible scenarios include potential buyers of properties offered for sale via auction having to source price guide information from multiple, potentially obscure or currently unknown sources and having to invest more time in doing so. Other data providers who may charge information, imposing an additional cost buyers. Failure to provide guidance may also lose an agent a sale.

*iv. Unintended anomalous outcomes*

*a) Experts in the field prohibited from providing information*

It seems inconsistent to prohibit real estate agents – experts in their field – from disclosing price guide information whether in advertising, editorial or otherwise. This is particularly the case when real estate agents are subject to consumer protection legislation, including state-based fair trading provisions, which address false and misleading activities. It is more efficient for complaints to be on an exceptions basis rather than applying a prohibition, particularly when there is a lack of explanation of a problem that requires the prohibition as a 'fix'.

*b) Best interests of vendor may be denied*

---

<sup>1</sup> Page21, <https://www.legislation.qld.gov.au/Bills/54PDF/2013/PropertyOccupB13E.pdf>

Another inconsistent outcome is that while a vendor's best interest could be served by disclosing a price guide, the agent would be prohibited from doing so. Similarly, vendors who want to disclose price guide information – including in advertising and editorial coverage – regarding a property being offered by auction are prohibited from doing so.

*c) Artificially skew the market towards fixed price sales*

A prohibition may also artificially move, or skew, sellers and buyers into fixed price sale/negotiated price arrangements because they are unable exercise free speech and to provide or obtain price guide information due to the prohibition. They may also miss out on editorial coverage, and therefore exposure, if a price guide is not able to be used.

Yours sincerely

A handwritten signature in black ink, appearing to read 'M Hollands', with a large, sweeping flourish underneath.

Mark Hollands  
Chief Executive