



9<sup>th</sup> April 2010

Mr J Hawkins  
Committee Secretary  
Senate Standing Committee on Economics  
PO Box 6100  
Parliament House  
Canberra ACT 2600

Dear Mr Hawkins,

**TRADE PRACTICES AMENDMENT (AUSTRALIAN CONSUMER LAW) BILL (NO. 2) 2010  
UNSOLICITED CONSUMER AGREEMENTS**

The Real Estate Institute of Western Australia (Inc.) welcomes the opportunity to comment on the Trade Practices Amendment (Australian Consumer Law) Bill (No. 2) 2010.

REIWA supports the initiatives to increase consumer protection, however it believes that the application of the cooling off provisions for unsolicited agreements to real estate transactions is not practical and harms the interests of property sellers.

The intent of the Bill's provisions for unsolicited agreements is to provide consumers who have been approached by 'high pressure', door-to-door traders or telephone canvassers with an opportunity to exit a contract which places an obligation upon the consumer to purchase goods or services that the consumer may subsequently deem that they do not require.

REIWA would like to bring to your attention that real estate transactions have a point of difference in that the agent's selling fee (pursuant to legislative requirement) is not payable until the seller's property has settled. The process leading to that final settlement is that the agent enters into a selling agency agreement (that has stringent statutory requirements), the property is promoted, prospective buyers are introduced, the seller considers and negotiates offers and then enters into a contract (often with the assistance of a legal practitioner). At any time up to the time when a contract for the sale of the property comes into force the seller has the opportunity to withdraw and the real estate agent does not receive a fee.

The impracticalities of the Bill's provisions are that if a seller enters into a selling agency agreement, in the scenarios outlined in the Bill, for the provision of services by a real estate agent, it is reasonable for the seller to expect that the agent will immediately commence the agreed marketing activities. However the

application of a 10 business day cooling off period to services provided by agents would interrupt the delivery of the services and create unnecessary conflict between sellers and real estate agents.

The provisions of the Bill prevent a real estate agent from providing any services including marketing or introducing prospective buyers to a property until the 10 business day cooling off period has expired.

The reluctance of real estate agents to risk losing their income during cooling off periods is understandable. However a seller would be forgiven for expecting that the real estate agent would provide the agreed services in a timely manner especially when the agent has approached the seller and may even have concerns that the agent is not acting in the seller's best interests.

The real estate agent agency sector is inherently different to other service and retail industries where a cooling off provision would apply. There is comprehensive protection for real estate consumers through the various state legislations that regulate real estate agents and their employees.

Other service providers, such as financial services, have cooling off provisions because their service contracts bind consumers to an immediate outcome and their fees quickly follow.

It is REIWA's view that it is in the best interests of consumers that there be a carve-out in the Regulations for real estate service providers.

Yours sincerely  
(...)

ANNE ARNOLD  
EXECUTIVE DIRECTOR