

CHAPTER 1

Introduction

Background

1.1 On 8 December 2004, the Parliamentary Joint Committee on Corporations and Financial Services adopted terms of reference for an inquiry into the regulation of property investment advice by the Commonwealth for inquiry and report by 23 June 2005.

1.2 The terms of reference for the inquiry are:

The Committee will inquire into the regulation of property investment advice by the Commonwealth, with reference to:

- (a) the effectiveness of current regulation (including the *Trade Practices Act 1974*, the *ASIC Act* and the *Corporations Act 2001*) of the property investment advice industry in protecting consumers;
- (b) allegations that property investment advisers engage in behaviour including:
 - (i) characterisation of their activities (for instance, as "education seminars") in order to avoid regulation;
 - (ii) habitual use of high pressure selling techniques in order to induce investment decisions;
 - (iii) failure to disclose interests they may have in properties they are selling;
 - (iv) failure to disclose commissions and fees associated with their services; and
 - (v) failure to provide appropriate disclosure of downside risk associated with the property or financial products they recommend;
- (c) whether it is appropriate for property investment advisers to simultaneously sell an interest in property and financial products enabling such purchases;
- (d) advantages and disadvantages of possible models for reform of the property investment advice industry including:
 - (i) national coverage through uniform state and territory legislation;
 - (ii) Commonwealth legislation; and
 - (iii) a scheme of self-regulation of property investment advisers on a national basis; and

- (e) whether current legal processes provide effective and easily accessible remedies to consumers in dispute with property investment advisers.

1.3 The Committee took the view that it was not its role in this inquiry to address individual cases involving consumers but rather to examine the overall regulatory scheme relating to the property investment advice industry. However, the Committee did take individual cases into account to the extent to which they provided illustrative examples of evidence provided to it.

1.4 The Committee is aware that the Ministerial Council on Consumer Affairs (MCCA) established a working party on property investment advice and released a discussion paper in August 2004. While the Committee understood that it was likely that there would be some parallels between the MCCA working party's examination of the property investment advice industry and this inquiry, the Committee expected to make a number of distinct contributions, including:

- examining the issue from a slightly different perspective to the MCCA (which approached the issue from a consumer affairs perspective – although informed by broader considerations of efficiently functioning financial markets);
- conducting a more public process than the MCCA (the MCCA did not release its submissions publicly);
- assisting the MCCA's consideration of the issue; and
- assisting the Commonwealth Government and the Parliament in considering any Commonwealth role or contribution suggested by the MCCA through the Council of Australian Governments.

Conduct of the inquiry

1.5 The Committee advertised the inquiry in *The Australian* newspaper, and details of the inquiry were placed on the Committee's website. The Committee also wrote to a number of organisations and individuals alerting them to the inquiry and inviting them to make a submission.

1.6 The Committee received 26 submissions, and these are listed at Appendix 1. Submissions were placed on the Committee's website.

1.7 The Committee held public hearings on the Gold Coast on 13 April 2005, in Sydney on 15 April 2005, and in Canberra on 28 and 29 April 2005. A list of witnesses who appeared before the Committee at each hearing is listed at Appendix 2. Copies of the Hansard transcript are available through the Internet at <http://www.aph.gov.au/hansard>.