

RESPONSE TO PROPERTY INVESTMENT ADVICE PAPER

**SUBMISSION TO THE MINISTERIAL COUNCIL
ON CONSUMER AFFAIRS**

28 OCTOBER 2004

28 October 2004



Dear Anthea

Thank you for the opportunity to comment on the Property Investment Advice Discussion Paper issued by the Ministerial Council on Consumer Affairs Working Party.

As the nation's first integrated property advisory and mortgage sourcing service, Property Planning Australia is greatly concerned about a range of issues in the property investment advice industry, including:

- application of general advice and 'one size fits all' strategies to individual investors without regard for differences in personal and financial circumstances
- insufficient disclosure of financial interests and third party affiliates on the part of property advisors, seminar promoters and providers in related industries
- lack of formal training for practitioners *advising purchasers*, as distinct from those *selling for vendors*
- a dearth of regulation specifically addressing purchaser advice, as distinct from selling for vendors.

Our enclosed response addresses Questions 1 to 17, summarises our key recommendations under Question 18, and provides information on Property Planning Australia under Appendix 1.

Thank you once again for the opportunity to comment on this significant issue. Property Planning Australia would be pleased to make a personal presentation to the Working Party regarding our views on the property investment advice industry and associated consumer and regulatory issues.

If you have any queries regarding our response, please call Mark Armstrong on (03) 9819 4088.

Kind regards

Mark Armstrong
Director

David Johnston
Director

CONTENTS

Questions 1–17: responses..... 1–27

Question 18/summary of recommendations.....28–32

Appendix 1: About Property Planning Australia33–34

Question 1

What do you see as the key factors driving the growth in retail property investment in Australia in recent years?

The MCCA Working Party paper outlines the following factors as driving property investment:

- expectations of rising house prices and the desire for capital gain
- cheaper and easier access to housing finance
- tax treatment of investments
- economic growth
- sharemarket downturn
- Baby Boomer retirement planning
- aggressive marketing by developers.

Property Planning Australia agrees that these factors have played a major role in fuelling property investment. However, we believe that a number of other factors have had a considerable influence — less documented perhaps, but equally as significant:

Investor disillusionment

Over the past few years, the collapse of major Australian and overseas public companies — most famously Ansett, One-Tel, HIH and Enron — has created a sense of investor disillusionment about corporate responsibility and investing in the *sharemarket*. The increasing globalisation of commerce and the instability in world political affairs (particularly tensions between the US, its allies and the Middle East) makes many investors feel that 'blue chip' stocks may not offer the same stability they once did. In Australia's sustained low interest rate environment, *cash and fixed interest* investments generate relatively poor returns.

As a result, many investors are looking for an alternative asset class to generate income and/or capital growth. 'Direct' property (as distinct from property purchased via units in trusts) is an asset that people relate to and believe they understand. Everyone has lived in a home; many have bought, sold or rented one. By its very nature, property creates a sense of security — real or imagined — that other asset classes do not.

Information revolution

Use of the Internet has spiralled in the last few years. The most recent statistics indicate that around 52 percent of Australian households are connected to the Internet, while 35 percent of Australians access the Net from their workplace (*source: National Office for the Information Economy, April 2002*).

The property industry has tapped into this potential market, and the Internet is now rife with websites offering information and education about property, ranging from estate agents' residential listings to new high-rise developments to seminar spruikers. The more information people see, the more they feel comfortable with it. In reality, *abundance* does not equal *quality*. In the vast majority of cases, 'educational' property information reflects the vested interests of the 'feeder', not the consumer.

Transforming the 'Australian dream'

Until quite recently, people associated 'property' primarily with 'family home'. This phenomenon was borne of burgeoning suburbs with quarter-acre blocks — a powerful and lasting symbol of the drive for stability and prosperity in post-War Australia. However, the factors discussed above, combined with flexible lending products that enable access to equity in the family home for investment purposes, mean that many more Australians now see property as a viable *wealth creation tool*, rather than merely a place to live.

The fear factor

It is well documented that declining birth rates are linked to increasing wealth. Australians are having fewer children later in life (or eschewing childrearing altogether). Income they would once have spent on raising and educating children is now being channelled into investments that will ultimately fund lifestyle pursuits. Many people believe that investment property, with the potential to generate capital growth as well as income, fits the bill.

Within this context, Baby Boomers are among the most active investors. The older Boomers, who spent much and saved little during their working years, are nearing retirement and no longer have children at home. Fearing that they will not be able to fund their retirement, they are entering the property market in droves and creating new levels of supply and demand.

Fear is a powerful motivator. When combined with ignorance borne of misinformation, it is a highly potent agent. The potential for poor decision making — and disastrous financial consequences — is enormous.

Gen X put the pressure on

Generation X is also putting considerable pressure on the property market. With different lifestyle expectations and more choices than their Baby Boomer and post-War parents, these Australians are choosing to work longer hours in their younger years to set themselves up financially before marrying and having children. More financially savvy than their forbears, they have a greater general understanding of the potential for property as an investment that will fund their lifestyles; although this broad knowledge does not always translate into sound investment decisions.

The key issue

The net effect of the increase in residential property investment is that the property market is no longer as homogenous as it once was. Individual precincts, suburbs, streets and properties have different underlying influences, and therefore perform in different ways — yet sadly, the vast majority of property information and 'advice' continues to propel the outdated notion that all property works in the same way.

Question 2

Have retail investors generally had a sufficient appreciation of the down-side risks associated with property investment? If you think a significant proportion have not, can you suggest why this may be the case?

Because the majority of information about property investment perpetuates the outdated notion that all property works in the same way, most investors have very little knowledge of the downside risks.

While the Working Party report raises several valid issues in relation to investor ignorance of risk, we believe a number of other factors play an equally significant role:

Underlying economic factors

We have already stated that not all property performs in the same way. It may assist the Working Party to further understand the key economic factors underlying this divergence — and hence the varying degrees of risk associated with property as an investment.

Land value (i.e. the value of the land component as a proportion of the overall value of the property) has a major influence on the degree of risk. Land is limited, but buildings can be renovated or replaced. Therefore land appreciates, while buildings depreciate. Generally speaking, established inner suburban residential areas have the least land available for development — fuelling long-term capital growth and reducing overall risk. In contrast, outlying areas have the most land available for development — limiting capital growth and increasing risk.

In inner city areas, where municipal and State authorities encourage the construction of high-rise developments, the amount of land may be limited but the number of dwellings is not. The land component forms only a small part of the property's overall value. The building component depreciates — meaning that many such properties lose value over time, break even or at best, grow slowly and slightly.

Demand also has considerable influence on the degree of risk. The more consistent the demand for a particular location or style of property over the longer term (i.e. a minimum 5–7 years as distinct from one or two) the lower the degree of risk. Where demand is 'trend-driven' or seasonal — e.g. new estates, high-rise developments, holiday areas — risk is generally higher.

Land value and demand are inextricably entwined. They work hand-in-hand to influence the degree of long-term capital growth (and therefore risk) of individual precincts, suburbs, streets or properties.

Example:

In several Australian capital cities, period homes (i.e. 1880–1940) in the inner suburbs are consistently sought after. Their unique and irreplaceable style, combined with the convenience and lifestyle of their location, has fuelled consistent demand from a range of purchasers over a long period. Land value is high, and capital growth generally strong — reducing the overall investment risk.

By contrast, high-rise units in the CBD and immediately adjacent areas are a relatively recent phenomenon; many are less than 10 years old. While some of the earlier developments represented innovative architecture when they were built, the number of CBD units has since burgeoned — meaning that very few of these building styles hold lasting appeal for purchasers.

The number of purchasers who can afford to buy these kinds of properties — which, when new, are priced to accommodate the developers' costs and profit margins — is relatively small; further limiting *true* demand. (We say 'true demand' because it is our observation that demand for these developments is often driven by clever marketing strategies and tax minimisation schemes, rather than an informed decision on the part of investors to purchase that kind of property).

Furthermore, the land value of these properties is relatively low. In any block of units, each property acquires a notional portion of the value of the land on which the whole building sits. The more units in a block, the smaller proportion of land value that each one commands.

The end result is limited, even negative capital growth, and a higher degree of risk.

Property Planning Australia believes that property promoters, developers, estate agents and 'educators' do not publicise the effect of underlying economic factors on property investment risk because it is not in their vested interest to do so.

Absence of risk profiling

When a consumer consults a financial planner for investment advice regarding shares, bonds, unit trusts or other asset types/vehicles, they are required by law to complete a risk profile questionnaire. This document enables the financial planner to form an idea of the investor's risk tolerance, and therefore the investment types that may be most suitable for them.

In stark contrast, and to the great detriment of consumers, the use of risk profiling in the direct property industry is virtually non-existent. Direct property is the most commonly purchased asset class in Australia — and the one that generally demands the highest initial and ongoing outlays — yet practitioners who give advice on direct property do not require their clients to complete risk profiles.

Property Planning Australia implements risk profiling as an integral part of the client relationship. We believe the rest of the direct property advisory industry should do likewise. Risk profiling should become standard practice, just as it is in the financial planning industry.

Lack of legislative recognition

The activities of the financial services industry (including financial planning, insurance, superannuation and banking) are heavily regulated by the Australian Securities and Investments Commission.

However, as mentioned on page 31 of the Working Party report, direct property does not come under the ASIC Act because investors do not relinquish control of their investment dollars and strategies to a third party.

Consumer protection law offers little in the way of specific provision for direct property investors, with purchasers forced to rely on the general provisions of the Trade Practices Act or State fair trading laws, for any level of redress in the event of disputes.

Industry self-regulation is fairly lax. Most State Real Estate Institutes abide by codes of conduct, but REI membership is not mandatory, and the codes of conduct are voluntary. Additionally, most self-regulation focuses on practices of real estate agents — but not the wide range of associated parties involved in the selling process, e.g. developers, marketers, accountants and self-styled ‘how to’ gurus.

This gap in the legislative and regulatory framework means that property ‘advisors’ are able to act outside existing jurisdictions with relative impunity. Property Planning Australia believes this gap needs to be addressed as a matter of priority, spearheaded by government in consultation with industry.

Undisclosed financial interests

Because they fall outside ASIC’s jurisdiction, property advisors are not obliged to make full disclosure of financial interests when they recommend direct property as an investment. As a result, a complex network of partly disclosed or hidden remuneration has sprung up around many properties marketed as ‘prime investments’.

For example, an estate agent sells an investor a block of land, and receives a commission on the sale. At face value, this seems like a typical scenario. But when the investor builds a development, the same agent will very often receive the exclusive listing for each property in the development — receiving further commissions. In turn, the people who purchase these properties may have been referred by accountants, lawyers, financial planners and others who are unable to advise on direct property — but very often receive commissions for referring potential purchasers. Full disclosure of the extent of remuneration in these complex structures works against the financial interests of all parties except the consumer — making it harder for investors to gauge the true level of risk.

Conflict of interest

Looking more closely at the real estate agent in the above example, another concern arises. The agent who sold the block of land for development was retained and paid by the *vendor*, not the consumer. Yet in the very act of selling, they purport to advise the consumer on the investment viability of the purchase.

This inherent (and undisclosed) conflict of interest, wherein the agent is advising the person to whom he/she is selling, goes to the heart of why the direct property industry has a poor reputation amongst the general public. Without an independent party to look out for their own interests, consumers must rely on their own judgement — and very often fail.

The greater the commitment, the higher the risk

Another factor rarely disclosed by the direct property industry is the inherent risk associated with putting a large proportion — sometimes all — one’s funds into a single investment. Most investors in direct property are individuals with limited resources (colloquially known as the ‘Mums and Dads’). These people are the most likely to put all their investment eggs in one basket and significantly increase their degree of risk, yet are also the ones who can least afford to sustain a loss.

This contrasts with property syndicates, where a large number of investors pool smaller amounts of money into a range of investment assets. Diversification can usually overcome any bad investment decisions, reducing risk.

Question 3

How does the market for investment advice about property operate in Australia today? How are advisory services being provided and by whom?

In describing the various parties who provide direct property advice, the Working Party paper focuses mainly on seminars and workshops run by self-styled 'gurus' who appear more focused on making money from these activities than on providing genuine property advice. Property Planning Australia agrees with the content and conclusions of the Working Party paper regarding this issue.

However, we believe the Working Party should more fully recognise and address the range of other parties involved in providing property advice, and the issues associated with them. We will examine each one in turn, following the order used in the Working Party paper.

1. **Accountants and financial planners**. We have already noted that these practitioners are not qualified to provide advice on direct property. Accountants are trained primarily in taxation law, whilst financial planners are trained in asset classes that come under ASIC's jurisdiction (i.e. shares, fixed interest investments, superannuation and unit trusts). Accountants generally look *back* over a person's income for the previous year in an effort to minimise their tax liability. Financial planners look *ahead* to plan for a client's future financial needs, but without including direct property in the equation. Because neither accountants nor financial planners are able to receive commission from recommending direct property, they refer clients to third parties who *can* — thereby generating a lucrative income stream of referral fees. Lack of disclosure means these remuneration structures remain grey areas ill-understood by the public. Over time, these grey areas become consumer blackspots.

To give property advice, one must be a licensed estate agent. Despite this, and unaware of the underlying remuneration chain, consumers continue to seek advice on direct property from accountants and financial planners — often suffering in the longer term.

2. **Real estate agents**. Despite the fact that they are retained to act on behalf of the *vendor*, real estate agents regularly give 'advice' to purchasers during the course of transaction. Phrases such as "This property represents excellent value for money/has a strong history of capital growth/strong rental returns/is located in a prime investment area" etc are commonly used in advertising and in direct dealings with potential purchasers. Under the influence of such powerful language from people who specialise in direct property, many purchasers gain the misguided impression that the estate agent is advising in their best interests, and often end up buying a poor asset.

This conflict of interest has its roots in the training programs for estate agents' licences. In Victoria at least, the overwhelming focus is on marketing, advertising and private sale/auction techniques. There is almost no content covering providing advice to purchasers, let alone the potential conflicts of interest in giving advice to purchasers whilst also receiving commissions from vendors.

3. **Buyers' agents**. These practitioners are simply real estate agents in reverse. They negotiate the purchase of a property that the purchaser has already identified, generally without evaluating their risk profile, or ascertaining whether the property is appropriate for their individual needs and circumstances. They operate based on what a client tells them they *want*, rather than providing structured advice to address their actual *needs*.

4. **Promoters and marketers of property-related 'wealth creation' training.** These people very often promote themselves as 'ordinary Australians who've done it tough' before discovering a magic formula that set them on the road to riches. As the Working Party paper recognises, they are often allied with property developers — although these associations are seldom fully disclosed, nor understood by consumers. Some are also allied with companies that provide finance for purchasers. Property Planning Australia believes that, far from providing genuine *advice*, these promoters are *selling a product*.

This product may begin with the investment philosophy itself, then branch out into seminars, workshops, spin-off books/CDs or (via allied companies) even properties or loans. While the amount of money consumers pay for these products is a concern in itself, this cannot be rectified unless a more fundamental issue is addressed: that these promoters are offering a 'one-size-fits-all' formula. They say that if a particular formula worked for them, it can work for everyone. This fails to recognise that each investor has different circumstances, financial position, risk profile and goals. While market performance obviously plays a large role, the success of any property investment strategy depends to a large extent on whether it is suited to the *individual investor* — not on how well it worked for others.

The common element among all these parties is that they purport to provide 'advice' when in fact they are *selling* something — either directly (e.g. seminars, books, CDs, properties, loans) or via referral to third parties (for which they receive commissions or other forms of remuneration). In this scenario, the investor is the least significant player, when in fact they should be at the very top of the food chain.

Question 4

Is our characterisation of the seminar operators/investment promoters fair and accurate? If not, in what respects is it inadequate?

Property Planning Australia believes that the Working Party's characterisation of seminar promoters is fair and accurate.

Even when a promoter's main 'product' appears to be an investment philosophy rather than something tangible like a course or book, the fact that they are encouraging others to apply this philosophy to their own situation without due diligence such as a full risk analysis, is tantamount to encouraging speculative investing — not genuine advice.

For example, many seminar promoters espouse the strategy of buying units off-the-plan to save stamp duty, then selling before settlement to make a profit. This kind of strategy relies heavily on picking market cycles — buying low and selling high — to be successful, yet the reality is that unless they have the proverbial crystal ball, no-one (not an even seasoned investor) can identify market peaks and troughs until they have been and gone. The investor, unaware of the inherent risks involved in such a speculative strategy, focuses on the advertised benefits such as stamp duty savings. Almost without exception, they purchase a second-rate asset that fails to deliver the promised capital growth, and/or consistent rental income.

Property Planning Australia would also like to draw the Working Party's attention to the nature of staff employed by seminar promoters to spread their message. In many cases, these staff are former 'students' of the promoter, having attended one or two courses and begun to apply the philosophies to their own investments. At face value, the use of former students to promote seminars is incredibly powerful — who better than a 'satisfied customer' to give an informed opinion about a product?!

Very often, these people have a zealous attachment to the ideas espoused by their mentor-turned-employer, to the extent that their belief in the philosophy may outweigh the investment results actually achieved. If the success of their investments depends on timing the market, a poorly chosen property will invariably show its true colours when the market turns down. Only then does the former student begin to realise that their mentor's philosophy may not be as foolproof as they had believed. By this time, they may have promoted the concept to many other eager investors, who will in turn act on the 'advice' and experience the fallout from poor investment choices.

When people are selling something they believe in but don't understand, the consequences for the consumer can be extremely serious.

Question 5

In your view, are there significant problems associated with the property investment advice and training marketplace? If so, what are those problems and how extensive are they? What is the extent of consumer/investor detriment or loss?

Property Planning Australia commends the Working Party for identifying a wide range of concerns about the property investment advice and training marketplace — particularly incompetent advice and non-disclosure of information.

We would, however, like to draw out a point that is implicit but not acknowledged. **Seminar promoters invariably focus on a single end goal — selling a product — be it a seminar, book, CD, property or loan. The soundness of the investment strategies they espouse comes a poor second to this goal. And because the strategies are promoted as ‘one-size-fits-all’, rather than being tailored to the needs of the individual investor, the interests of the end-consumer come a very poor third.**

We believe the consumer can only make a truly informed decision when this equation is reversed. This means starting with a full analysis of the individual’s personal and financial circumstances and goals (including a risk profile), *then* developing a *tailored* investment strategy. Any products associated with the strategy should be promoted responsibly and the remuneration arrangements fully disclosed.

Insufficient or selective disclosure of third party involvement

In the paragraph titled ‘Undisclosed financial interests’ (see page 5) we outlined our concerns with the complex network of individuals and organisations that often underlie the activities of property seminar promoters. Many seminar presenters promote their products as ‘developed through personal experience’ or ‘truths I learned the hard way’, and use their personal profile to underline the credibility of the products. However, these frontmen and women are often supported by an extensive array of other parties with a financial interest in their operations — a fact they seldom disclose.

Most property seminars revolve around a certain philosophy, and the passionate presenters spare no effort when it comes to driving home their key message. Participants leave these seminars believing they can easily apply the strategies to their own situations. This is the point at which they feel most empowered and enthusiastic — and the point at which they are most susceptible.

In more strictly regulated industries such as financial planning, general advice provided in a seminar would be followed up by a one-on-one consultation and a full evaluation of the individual client’s personal and financial circumstances and goals (including a risk analysis). The evaluation would be documented via a tailored report and risk profile, which the client would be asked to read and sign. The report would disclose any affiliations with third parties, and the nature of the remuneration involved. Only at this point would the client consider adopting any recommendations regarding specific products.

In the property advice industry, this kind of ‘best practice’ rarely — if ever — takes place. Consumers often jump straight from attending seminars into borrowing funds to purchase the ‘prime investment’ properties recommended by the seminar promoters. The lender, conveyancer

and estate agents are often financially affiliated with the seminar promoter (and with each other) — making it as easy and attractive as possible for the consumer to purchase the recommended properties.

In a market where every property performs differently, and the client is placing tens or hundreds of thousands of dollars on the line, it is entirely reasonable to expect that third party affiliations would be fully disclosed so the consumer can make an informed decision — but this is seldom the case.

Property Planning Australia believes that full disclosure of the nature and extent of third party affiliations (including remuneration) should be mandatory for all recommendations regarding investment property, including those made by seminar promoters and their affiliates.

'Advice' without knowledge

Under Question 4 we broached the issue of former seminar participants being employed by property seminar promoters. These people have a powerful belief in the promoter's philosophies — but the level of enthusiasm is generally equalled by a lack of knowledge about how property works as an asset. Property investment schemes recommended by seminar promoters are often linked to market cycles ('buy low, sell high'). This affords investors a very small window of opportunity in which to make crucial decisions — a highly speculative and risky scenario.

Uneducated about the true nature of property as an asset, and unaware of this fundamental flaw in their employer's philosophy, these staff continue to spread the message to new investors; perpetuating the myths and widening the circles of high-risk investment behaviour.

Lack of formal training for property advisors

The activities of uneducated seminar promotion staff give rise to a wider issue. Although estate agents and other parties have been providing incidental 'advice' to purchasers for years during the course of property transactions, the emergence of practitioners purporting to make purchaser advice the cornerstone of their business is a relatively recent phenomenon. The property training industry has been slow to catch up with this development, with the result that the overwhelming bias of formal qualifications specifically relating to direct property is towards sales and marketing on behalf of vendors — not providing advice to purchasers.

In Victoria, for example, the REIV offers the following basic qualifications and professional development courses:

- REIV Course for Agents' Representatives (i.e. property management)
- Intensive Licensing Program
Certificate IV in Business (Estate Agency Practise)
- Traineeship in Real Estate
- Ethics
- Auction/Sales
- Property Management
- Commercial Sales & Property Management
- Human Resources & Industrial Relations
- Management
- Business Sales/Broking
- Body Corporate
- General Agency Practice

(Source: REIV website)

There is no separate licence or training program for people who advise *purchasers*. This perpetuates a situation in which personnel trained to *sell* on behalf of the *vendor*, can also *advise* the purchaser — often at the same time, without any disclosure of a potential conflict of interest.

(In keeping with our views regarding disclosure, we should acknowledge that Property Planning Australia Director Mark Armstrong is a Licensed Estate Agent. To remove any potential for conflict of interest, it is a matter of policy that neither Mark, nor any other company personnel, actually *sell* property. This policy is fully disclosed to our clients as a matter of course in all transactions. For further details, please refer to Appendix 1: 'About Property Planning Australia'.

Property Planning Australia believes that the property advice industry urgently requires its own formal training programs which focus on purchasers, not vendors. We would be pleased to collaborate with the Working Party, REIs and other interested parties to develop these programs.

Question 6

Is our characterisation of the problems associated with the property investment advice and training marketplace fair and accurate? Does it cover the main issues sufficiently? If not, in what respects is it inadequate?

Property Planning Australia believes the Working Party's characterisation goes some way towards documenting the problems associated with the property investment advice and training marketplace. However, it focuses mainly on the high profile seminar promoters, whose activities generate the greatest media coverage and public outrage. This does not address the root cause of the industry's problems.

We believe that, in order to develop a fully considered and effective response to the problems plaguing the property investment advice marketplace, the Working Party must also address the nature and extent of underlying networks that support the seminar promoters — estate agents, lenders, accountants, conveyancers/solicitors and other interested parties.

Question 7

Leaving aside the unlicensed property investment promoters, are you aware of consumer problems associated with the property advisory activities of professional or trade groups?

Property Planning Australia believes there are several consumer problems with the property advisory activities of professional and trade groups:

Use of past performance data to advise on likely future performance

Professional and trade groups such as accountants, lawyers and financial planners who are not qualified to advise on direct property often circumvent the issue by using general past performance data to back up their assertions about the merits of an individual property.

They cite median values for a suburb or city over a short period of time (usually a year), then apply it to individual properties. This demonstrates a fundamental flaw in their advice to consumers — a lack of understanding that every property performs differently.

Median values and other general past performance data cannot accurately predict the way an individual property is likely to perform as an asset moving forward. Future performance depends on a series of interrelated underlying factors, including:

- **land-to-value ratio:** the value of land as a proportion of the overall value of an asset
- **supply and demand trends:** over a period of weeks, months or years; and specific to individual property styles and locations
- **demographic trends:** e.g. Baby Boomers downsizing; Gen X/Y seeking inner suburban lifestyle
- **building trends:** number and style of new buildings and renovations
- **technology trends** (relevant to commercial investment property): changes in the availability/desirability of certain property styles, e.g. surplus of banks after deregulation; likely surplus of video shops as more householders move to digital home entertainment options.

Referral and remuneration overrides quality of asset/advice

We have explored this issue on previous pages. To briefly reiterate, accountants, lawyers and financial planners are not qualified to advise on direct property, and cannot receive direct remuneration from this activity. There is little or no consideration for how an individual property will perform as an investment asset, because there is no financial incentive to provide the client with genuinely personalised advice.

Instead, they refer the client to an estate agent or developer, who sells the client a property and is remunerated. The estate agent and/or developer passes a portion of this remuneration to the accountant, lawyer or financial planner as a referral fee. And so the cycle continues on.

Regulatory 'safe houses'

When accountants provide taxation advice, they are bound by complex taxation law. When lawyers provide legal advice, they are bound by the relevant statutes and duty of care provisions. When financial planners provide financial advice, they are bound by the FSRA. Each of these legislative frameworks carry stiff penalties for breaches.

In addition, all three professions have voluntary industry-monitored regulations and codes of conduct to facilitate high quality consumer advice.

When practising in the areas for which they are licensed, this legal and regulatory framework provides these professions with a 'safe house' that sets relatively clear boundaries for what constitutes ethical practice.

By contrast, direct property advisors (estate agents, developers, marketers, seminar promoters and buyers' advocates) have very little in the way of regulation to guide and check their activities. At State level, the Real Estate Agents' Act is the only law relating specifically to the activities of direct property advisors — and is overwhelmingly focused on the activities of estate agents who *sell* property. This law is designed to protect the *vendor* (and implicitly, the selling agent) — not the purchaser.

With little specific legislation to protect them, purchasers must fall back on the more general protections afforded by State fair trading laws, Federal credit laws and Federal trade practices legislation. Given the amount of money that consumers put into direct property under 'advice' from people whose key incentive is to *sell*, and the personal and financial disasters that so often ensue, Property Planning Australia believes that the legislative framework for direct property advisers must be significantly improved until it equals that for accountants, lawyers and financial planners.

Question 8

Do you have any comments on our outline of the current legal framework? Apart from those we have considered, are there other laws or regulatory mechanisms relevant to the regulation of property investment advice and training activities?

The Working Party report alludes to, but does not explicitly recognise, Property Planning Australia's key concern with the current legal framework — that it regards property as a home people live in, rather than the investment asset it has now also become.

According to footnote 45 on page 31 of the Working Party report, the ASIC Act's rationale for excluding direct property is that — unlike 'financial products' such as shares and managed funds, where an investor entrusts day-to-day control to a third party to generate a return — direct property investors retain direct control of decisions and returns.

While it is desirable and appropriate to protect consumers who entrust control of their investments to a third party, the very notion of *retaining* control is the reason many consumers prefer to invest in direct property. Furthermore, the fact that someone retains direct control of their investment does not, in itself, render them any more likely to make sound decisions. Current legislative and regulatory frameworks do not recognise these fundamental facts.

As a result, consumers who invest in direct property are afforded little protection other than general fair trading, credit and trade practices legislation referred to under our response to Question 7. In extreme cases, statute law can protect consumers but this only addresses the symptom, not the cause.

Laws alone do not address the issue

Current laws go some way towards protecting consumers from unfair, misleading and deceptive conduct on the part of estate agents, developers and seminar promoters. However, they do not address the key issue — a lack of understanding among these practitioners about the way property performs as an asset. Because each property is underpinned by different underlying factors (refer to our response under Question 7) it is simply not sufficient or appropriate to apply one investment strategy across a range of property styles, locations and price ranges. The individual's personal and financial circumstances (including income, equity, commitments, risk profile, investment experience and timeframe for investment) also dictate the investment strategy most suitable for them — yet property advisors rarely, if ever, acknowledge this fact.

This comes back to the dominance of sales-oriented training for property practitioners, and a dearth of training that focuses on providing genuinely personalised *advice*.

We believe there are now two industries operating in the direct property market:

- 1. a sales-oriented industry that clearly works for the vendor**
- 2. an advice-oriented industry that *purports* to work for the purchaser/consumer**

The sales-oriented industry is regulated via the Estate Agents' Act and industry self-regulation. The advice-oriented industry is almost completely unregulated. Property Planning Australia believes there is an urgent need for a regulatory framework that:

- a) recognises the existence of these two industries
- b) improves the overall regulation of both industries
- c) brings regulation for the advice-oriented industry up to a standard equivalent to that of the sales-oriented industry.

Question 9

Do you agree with the stated objectives of government intervention in the property investment advice market place? If not, what should government's objectives be?

In broad terms, Property Planning Australia agrees with the Working Party report's stated objectives for government intervention. However, we believe the Working Party should consider the following additional points:

Objective 1: that the market is transparent and operates consistently with community standards and expectations

We would like to make three points in relation to the objective of transparency in the direct property industry. The first is the **lack of accurate information sources**. In making investment decisions, consumers have access to 'information' provided by a range of sources including the media, family, friends, accountants, lawyers, financial planners and real estate agents. However, quantity does not equal quality. Out of all these groups, only estate agents are qualified to provide direct property advice — yet they are remunerated by the *vendor*. Unless the issue of misinformation is addressed at regulatory level, a truly transparent direct property industry will be extremely difficult to achieve.

Our second point regarding transparency is the **lack of real-time data** available to the consumer. Disclosure of the selling price immediately following an auction or private sale is voluntary and at the vendor's discretion. This contrasts with the sharemarket, where the selling price is constantly updated via publicly available indexes such as the All Ordinaries.

A case in point is where a property is passed in at auction for an undisclosed amount, and is later put back on the market via private sale. If the passed-in figure is not disclosed, the purchaser has no way of knowing whether the current asking price is higher and/or represents fair market value.

Our third point relates to the **competence of practitioners**. According to the Working Party report, a transparent market assumes that participants are competent to provide the services they offer. Property Planning Australia believes that, due to the overwhelming emphasis on sales-oriented training, and the dearth of training for genuinely personalised *advice*, the majority of practitioners are not competent. This is a serious concern when uneducated consumers are investing tens or hundreds of thousands of dollars in a single asset.

Compare this situation with what happens when a consumer visits a practitioner from a more regulated industry with recognised training standards — for example, a GP or nurse. When seeking medical treatment, the consumer knows that the practitioner has completed a certain level of training, and simply *assumes* that he/she is competent. The law recognises this via stringent malpractice and professional indemnity provisions for incompetent or careless actions.

Objective 2: that advisory services to retail investors and prospective investors are of a generally high standard

The Working Party report considers that property investment advice should not be conflicted, or that at very least, existing or potential conflicts of interest should be adequately disclosed. Property Planning Australia fully supports this statement. As things currently stand, conflicts of interest exist throughout the property investment advice industry, and are seldom adequately disclosed.

One example we have not previously mentioned involves estate agents establishing lending divisions by to provide finance to *purchasers*, at the same time as the estate agents are receiving remuneration from *vendors*. This conflict of interest is compounded by the fact that the estate agent is privy to the purchaser's borrowing capacity. This enables them to sell the property based on how much the purchaser can afford, as distinct from the property's real market value.

This practice is not illegal in itself, and Property Planning Australia is not suggesting that any real estate agent is breaking the law. However, at the very least, this practice could create a public *perception* of a conflict of interest, whereby the agent is seen to be taking a fee from both parties to the transaction (i.e. one fee from the purchaser for the finance, and another from the vendor for the sale). In Victoria, this practice is prohibited under Section 13 of the *Estate Agents Act (Professional Conduct) 1997*.

The Working Party report considers that property investment advice should include a balanced assessment of the downside risks associated with any property investment strategy. Property Planning Australia fully supports this assertion, and offers the following example of an investor who contacted our office after attending property seminar run by another organisation:

The seminar presenter suggested that the best way to invest in property was to **a)** use complex trust and company structures to invest in cashflow-positive property; and **b)** establish an asset protection strategy. Essentially, this kind of strategy amounts to using scare tactics instead of genuine advice. By placing assets in a trust, the investor relinquishes personal control of the investment and therefore gains protection. By establishing an asset protection strategy, the investor guards personal assets against claims made by creditors, in the event that they are sued.

However, this strategy fails to recognise that every investor has different circumstances, and a trust structure may not always be the appropriate type of ownership. Likewise, asset protection strategies are not relevant to all investors. For example, the personal assets of self-employed people and company Directors may be at risk if they are held liable when their business fails. However, this is not relevant to investors who are employees.

Furthermore, the strategy espoused by this seminar presenter:

- was high-risk; yet the investor in question had a low risk tolerance
- was aggressive; yet the investor's investment preferences were conservative
- had high setup costs in terms of establishing trust and company structures; a fact the investor did not understand
- advised the investor to buy cash flow positive property but did not tell them where to find it
- ignored the fact that the investor was an employee and had few asset protection concerns
- (more fundamentally) did not recognise the investor's real goal — to buy a home to live in.

The Working Party report considers that property investment advice should have a reasonable basis taking account of the investor's financial situation and objectives or needs on the one hand, and the proposed investment on the other.

Property Planning Australia fully supports this assertion, because it goes to the heart of a fundamental flaw in the current property advisory marketplace. The vast majority of investment strategies focus on selling a product. The type of investment strategy comes second to this overriding goal, while the interests of the individual consumer come last. Property Planning Australia believes that, if advice is to genuinely take into account the individual consumer's circumstances, this equation must be reversed.

In other words, property advisors must **first** undertake a full assessment of each client's personal situation, financial circumstances and goals, including a comprehensive risk profile. Only then should they develop a *tailored* investment strategy. Property advisors should not be allowed to *sell* any properties they recommend. Selling should be undertaken by practitioners in a parallel industry (the sales-oriented industry focused on *vendors*).

This is the philosophy underlying all the advice that Property Planning Australia provides to clients. Please refer to Appendix 1 'About Property Planning Australia' for more details.

Question 10

Are the objectives referred to in the previous question currently being met?

Property Planning Australia does not believe that the objectives referred to in Question 9 are currently being met. This is because **a)** the current regulatory framework does not recognise that direct property is an income and growth-producing investment asset in its own right; and **b)** property advice training is focused squarely on selling to vendors, not advising purchasers.

We have covered these issues in greater detail under our responses to previous Questions.

Question 11

Can the objectives of government intervention in relation to property investment advice be realised to an acceptable level within the current regulatory framework?

Property Planning Australia does not believe the objectives of government intervention can be realised acceptably within the current regulatory framework.

This is because the legislation does not focus on the individual investor. Advice can be given based on generic principles. There is no legal requirement to justify or document that the advice given is *appropriate for that particular investor at that period in time*.

Property Planning Australia believes property advisors should be legally required to provide clients with a Statement of Advice, similar to that used in the financial planning industry.

Question 12

If a new regulatory scheme were to be introduced, what should its scope or coverage be? What activities should be covered, in respect of what types of property, and who should be protected? Do you agree that related advice about the financing of property investment should be covered?

Who should be regulated?

Section 8.3 of the Working Party report considers that a functionally-based approach to regulation is the most appropriate. This means that anyone involved in the regulated activities would fall under the new regime (subject to carve-outs). Property Planning Australia fully agrees with this; it is a 'catch-all' approach that recognises the wide range of practitioners working in the direct property advice industry.

Property Planning Australia also agrees with the Working Party that property investment financing activities should fall under the new regime. This will pick up on issues such as conflicts of interest when a finance division within an estate agency lends money to a *purchaser* to buy a property that the same agency is selling on behalf of a *vendor*.

Regulatory carve-outs

(The Working Party requests our views on carve-outs under Question 13, however, we have chosen to address it here, as it forms a crucial aspect of our views on a new property advice regime).

We believe that only those engaged in providing *personalised advice to purchasers* regarding direct property should fall under the new regime. This includes property advisors and buyers' advocates.

We recommend excluding all practitioners engaged in *selling a product on behalf of vendors and/or providing general advice about property*, i.e. estate agents, marketers, developers **and** seminar promoters. These practitioners should be accommodated under State Real Estate Agents' Acts — although the provisions of these Acts should certainly be strengthened.

Carving estate agents and related practitioners out of the new regime will recognise and preserve the distinction between people who provide personalised advice to *purchasers*, and those who provide general advice about property and/or sell on behalf of *vendors*. In circumstances where a practitioner may be working on behalf of one party but incidentally provide advice to the other (e.g. where an estate agent is retained by a vendor to sell a property, and gives general advice to a potential purchaser about that property) the legislation must mandate disclosure of any existing or potential conflicts of interest.

We cannot emphasise enough the importance of recognising the difference between selling and advice, and enshrining this distinction in law.

In regards specifically to the activities of seminar promoters, the establishment of two clear regimes for a) personalised advice and b) general advice/selling industries provides an opportunity to establish clear pathways for seminar participants, as distinct from the current situation in which they are little more than lambs to the slaughter in a market marred by poor information and undisclosed vested interests. These pathways could be built in one of two ways:

1. Seminar participants could attend a one-on-one consultation with a property advisor *dedicated to providing personalised advice to purchasers*. The advisor would provide a personalised assessment of the individual's personal and financial circumstances and goals (including a risk profile), and back this up with written advice and justification for any recommendations.

[OR]

2. Seminar promoters could be brought into the *personal advice regime* by being required to provide the same one-on-one service as described above for property advisors. The onus would be on the promoter to demonstrate how the philosophies espoused in the seminar related to that individual investor's circumstances.

Whichever way is chosen, the end result will empower consumers to make more informed decisions; and by default, lessen the influence of seminar promoters so that this segment of the industry is forced to fall into line. Rogue traders in any property-related profession (whether providing advice to purchasers or selling for vendors) could be dealt with under strengthened provisions of existing consumer protection laws.

Levels of regulation

We believe there is a need for regulation at both the Federal and State levels. Federal regulation would recognise direct property investment as a financial asset, and hence bring it under the ASIC Act in the same way as shares and managed funds.

State regulation could focus on strengthening existing real estate and consumer protection laws, and administering the new regime. Having deterrents at both Federal and State level would increase the risk for anyone contemplating acting outside the law.

Property Planning Australia believes that, while industry should be widely consulted, any new regime should be mandatory and fully administered/enforced by government. History has proven that the real estate (selling) industry is a poor self-regulator, and there is no reason to suppose that the personalised property advice industry would be any different.

Question 13

If a new regulatory scheme were to be introduced, would a ‘carve-out’ from the regulatory scheme be justified for any particular professional or trade groups, or in respect of any particular activities? If so, why?

Under Question 12, we said that anyone involved in providing general advice about property and/or selling on behalf of vendors (i.e. estate agents, developers and marketers) should be subject to one regime centred around State real estate legislation.

Anyone involved in providing personalised advice to purchasers (i.e. property advisors and buyers’ advocates) should be subject to a new regime enforced and administered at State level, with overarching Federal legislation recognising property as a financial asset. Taken to its furthest extent, this structure would also include accountants, financial planners, solicitors, mortgage brokers and lenders. This would oblige them to make full disclosure of any affiliations with seminar promoters, estate agents and other parties, along with any referral fees or other remuneration arrangements.

Seminar promoters could fall into either regime, depending on whether they were required to provide participants with a personalised assessment and justification as to why the seminar philosophies related to their own circumstances.

Question 14

Is there a role for self-regulatory or co-regulatory mechanisms (for example a voluntary industry code or a mandatory code) in the regulation of property investment advice?

Property Planning Australia believes that industry should be fully consulted in the development of any new regulatory regime. However, we do not believe there is a role for industry in terms of co-regulation or self-regulation. History has proven the property industry to be a poor-self regulator, while the number and range of interested parties in the property investment advice industry would make any kind of consensus and co-regulation very difficult.

This makes government regulation the only workable model. Government regulation has the additional advantage of driving home the reality that property advice is an industry unto itself, requiring its own regime and penalties for breaches.

Question 15

If a new regulatory scheme were to be introduced, how detailed and prescriptive should the scheme be? Are there particular regulatory requirements or mechanisms that should/should not be introduced? Should those involved in the provision of advice about property investment be required to be licensed?

Property Planning Australia strongly believes that a new regulatory regime must:

- recognise the difference between a) people providing general advice about property and/or selling on behalf of vendors; and b) people providing personalised advice to purchasers
- actively enshrine this difference in regulatory structures
- require full disclosure of any potential conflicts of interest, e.g. if someone provides general advice to one party whilst acting on behalf of the other
- require full disclosure of any fees, commissions or other financial/in-kind incentives given to or received by third parties (e.g. accountants, lawyers, financial planners) who refer clients for property advice
- require anyone providing property investment advice, whether general or personal, to hold the appropriate licence. This will bring the industry on-par with the accounting, legal and real estate industries, all of whom require practitioners to hold licences relevant to their areas of expertise
- include strict penalties for non-compliance, including hefty fines, license suspension or cancellation, or even imprisonment.

Question 16

What is your preferred Option among those outlined in section 9? Why? Are there other or variant Options that we should consider?

Property Planning Australia prefers Option 3. A comprehensive conduct, disclosure and licensing regime, fully administered by government, is the only way to enshrine the difference between general and personal property advice, recognise that the two are separate industries and ensure commensurate regulation.

Question 17

If a new regulatory regime were to be introduced, should it be a Commonwealth or a State and Territory responsibility?

As previously discussed, we believe the regime should be administered and policed at State level, with overarching Federal laws that recognise direct property as a financial asset. This will enable each State to make laws relevant to property issues in their own jurisdictions, whilst at the same time ensuring a degree of consistency across Australia.

Question 18

Is there any other information you wish to provide? Are there other issues you wish to raise? Do you have any further comments?

Property Planning Australia would be pleased to make a personal presentation to the Working Party regarding our views on the property investment advice industry and associated consumer and regulatory issues.

Meanwhile, for the Working Party's convenience, we have summarised our key recommendations:

Recommendation 1

Over recent years, a range of factors have fuelled a significant increase in residential property investment. As a result, the property market is no longer as homogenous. Individual precincts, suburbs, streets and properties have different underlying influences, and therefore perform in different ways — yet the majority of property information and 'advice' propels the outdated notion that all property works in the same way.

Property Planning Australia believes that seminar promoters, developers, estate agents and 'educators' do not inform consumers about the true nature of the property market, because it is not in their vested interest to do so.

Recommendation 2

When a consumer consults a financial planner for investment advice regarding asset vehicles such as direct shares, bonds and unit trusts, they are required to complete a risk profile questionnaire. This enables the financial planner to form an idea of the investor's risk tolerance, and therefore the investment types that may be most suitable for them.

In contrast, the use of risk profiling in the direct property industry is virtually non-existent. Direct property is the most commonly purchased asset class in Australia — and the one that generally demands the highest initial and ongoing outlays — yet practitioners undertake little, if any, risk assessment. Property Planning Australia regards this as unacceptable, and believes risk profiling should become standard practice in the direct property industry.

Recommendation 3

The activities of the financial services industry are heavily regulated by ASIC. However, direct property does not come under the ASIC Act because investors do not relinquish control of their investment dollars and strategies to a third party. Consumer protection law offers little in the way of specific provision for direct property investors. Most State Real Estate Institutes abide by codes of conduct, but REI membership is not mandatory, and the codes of conduct are voluntary.

This gap in the legislative and regulatory framework means property 'advisors' can act outside existing jurisdictions with relative impunity. Property Planning Australia believes this gap must be addressed as a matter of priority.

Recommendation 4

The Working Party paper focuses mainly on the activities of self-styled 'gurus' and seminar promoters. While Property Planning Australia certainly agrees that this sector of the market needs to be regulated, we believe the Working Party should more fully recognise and address the range of other parties involved in providing property advice, and the issues associated with them. The key parties here are accountants, financial planners, lawyers, real estate agents and buyers' agents.

Recommendation 5

Because they fall outside ASIC's jurisdiction, property advisors are not obliged to make full disclosure of financial interests when they recommend direct property as an investment. As a result, a complex network of partly disclosed or hidden 'referral fees' and associated remuneration has sprung up around many properties marketed as 'prime investments'. Property Planning Australia believes that full disclosure of remuneration works against the vested financial interests of all parties except the consumer — making it harder for investors to gauge the level of risk.

Recommendation 6

The undisclosed conflict of interest prevalent in the direct property industry, wherein the agent is retained by and paid by the vendor, whilst at the same time providing general advice to the purchaser, is a fundamental problem for consumers. Without an independent party to look out for their own interests, consumers must rely on their own judgement, and often fail.

Recommendation 7

Seminar promoters often encourage participants to apply an investment philosophy to their own situation without due diligence such as a full risk analysis. Property Planning Australia believes this is tantamount to encouraging speculative investing — not genuine advice. In most cases, investors purchase a second-rate asset that fails to deliver the promised capital growth, and/or consistent rental income.

Recommendation 8

Many staff employed by seminar promoters are former 'students' of the promoter. This is a powerful marketing technique. However, their belief in the philosophy may far outweigh their understanding of the way property works as an asset — so the chances of failure are high. By the time the asset shows its true colours, they may have promoted the concept to many other eager investors, who will in turn experience the fallout from poor investment choices.

Recommendation 9

Seminar promoters invariably focus on a single end goal — selling a product — be it a seminar, book, CD, property or loan. The soundness of the investment strategies they espouse comes a poor second. And because the strategies are promoted as 'one-size-fits-all', rather than being tailored to the needs of the individual investor, the interests of the investor come last.

Property Planning Australia believes the consumer can only make a truly informed decision when this equation is reversed. This means starting with a full analysis of the individual's personal and financial circumstances and goals (including a risk profile), *then* developing a *tailored* investment strategy. Any products associated with the strategy should be promoted responsibly and the remuneration arrangements fully disclosed.

Recommendation 10

Although estate agents and other parties provide general advice to purchasers during the course of property transactions, the emergence of practitioners purporting to focus on advising purchasers is a relatively recent phenomenon. The property training industry has not caught up with this development. The bias of formal qualifications specifically relating to direct property remains towards sales and marketing on behalf of *vendors*.

Property Planning Australia believes that the property advice industry urgently requires its own formal training programs that focus on providing advice to *purchasers*. We would be pleased to collaborate with the Working Party, REIs and other interested parties to develop these programs.

Recommendation 11

Property Planning Australia's key concern with the current legal framework is that it continues to regard property as a home people live in — not the investment asset it has now become. This is typified in the ASIC Act's rationale for excluding direct property on the basis that investors retain direct control of decisions and returns.

This does not recognise that the notion of retaining control is the reason many consumers invest in direct property. Moreover, the fact that someone retains direct control of their investment does not, in itself, render them any more likely to make sound decisions. Property Planning Australia believes that the legislative framework must recognise these fundamental facts before any reform can be achieved.

Recommendation 12

Property Planning Australia believes there are now two industries operating in the direct property market:

- a sales-oriented industry that clearly works for the vendor
- an advice-oriented industry that *purports* to work for the purchaser/consumer.

The sales-oriented industry is regulated via the Estate Agents' Act and industry self-regulation. The advice-oriented industry is almost completely unregulated. Property Planning Australia believes there is an urgent need for a regulatory framework that:

- recognises the existence of these two industries
- improves the overall regulation of both industries
- brings regulation for the advice-oriented industry up to a standard equivalent to that of the sales-oriented industry.

Recommendation 13

Property Planning Australia does not believe the objectives of government intervention can be realised acceptably within the current regulatory framework. This is because the legislation does not focus on the individual investor. Advice can be given based on generic principles. There is no legal requirement to justify or document that the advice given is *appropriate for that particular investor at that period in time*.

Property Planning Australia believes property advisors should be legally required to provide clients with a Statement of Advice, similar to that used in the financial planning industry.

Recommendation 14

Property Planning Australia agrees that a functionally-based approach to regulation is the most appropriate. This is a 'catch-all' approach that recognises the wide range of practitioners working in the direct property advice industry.

Property Planning Australia also agrees that property investment financing activities should fall under the new regime. This will pick up on issues such as conflicts of interest when a finance division within an estate agency lends money to a *purchaser* to buy a property that the same agency is selling on behalf of a *vendor*.

Recommendation 15

Property Planning Australia believes that the new regulatory regime must recognise the difference between *general advice/selling* and *personalised advice*.

Only those engaged in providing *personalised advice to purchasers* regarding direct property should fall under the new regime. This includes property advisors and buyers' advocates. All practitioners engaged in *selling a product on behalf of vendors and/or providing general advice about property* — estate agents, marketers, developers and seminar promoters — should be accommodated under strengthened provisions of State Real Estate Agents' Acts.

Carving estate agents and related practitioners out of the new regime will recognise and preserve the distinction between people who provide personalised advice to *purchasers*, and those who provide general advice about property and/or sell on behalf of *vendors*.

Where a practitioner is working on behalf of one party (e.g. a vendor) but incidentally providing advice to the other (e.g. a purchaser) legislation must mandate disclosure of any existing or potential conflicts of interest.

Recommendation 16

In regards specifically to the activities of seminar promoters, the establishment of two clear regulatory regimes provides an opportunity to establish clear pathways for seminar participants, rather than the current situation in which they are left to apply a 'one size fits all' philosophy to their own circumstances.

Seminar participants would leave the course or workshop knowing they could access licensed personnel *dedicated to providing personalised advice to purchasers*. The advisor would provide a personalised assessment of the individual's personal and financial circumstances and goals, and support this with written advice and justification for any recommendations.

Alternatively, seminar promoters could be brought into the *personal advice regime* by being required to provide the same service described above for property advisors. The onus would be on the promoter to demonstrate how the philosophies espoused in the seminar related to that individual investor's circumstances.

Recommendation 17

Property Planning Australia believes there is a need for regulation at the Federal and State levels. Federal regulation would recognise direct property investment as a financial asset, and bring it under the ASIC Act. State regulation could focus on strengthening existing real estate and consumer protection laws, and administering the new regime.

We believe that, while industry should be widely consulted, any new regime should be mandatory and fully administered/enforced by government. In our view, the real estate (selling) industry is a poor self-regulator, and there is no reason why the personalised property advice industry would be any better.

Recommendation 18

Property Planning Australia believes a new regulatory regime must include strict penalties for non-compliance, including hefty fines, license suspension or cancellation, or even imprisonment.

Recommendation 19

Property Planning Australia prefers Option 3 in the Working Party report. We believe that a comprehensive conduct, disclosure and licensing regime — fully administered by government — is the only way to enshrine the difference between *general advice/selling* and *personal advice*, recognise that the two are separate industries and ensure commensurate regulation.

Appendix 1:

About Property Planning Australia

The property and mortgage markets are more complex than ever before — a wider range of housing styles, sub-markets and price ranges; more lenders offering more loan products. This situation is made even more complicated by the burgeoning of seminar promoters, self-styled ‘experts’ and other practitioners who promote a single investment philosophy as appropriate for all investors, regardless of differences in their individual circumstances.

The net results are considerable consumer ignorance and confusion, poor investment choices and, in some cases, severe personal and financial difficulties.

Client first, strategy second, property third

Property Planning Australia is the nation’s first integrated property advisory and mortgage sourcing service. We look at each client’s individual circumstances — including but not limited to income, outgoings, equity, employment status, dependants, risk profile, investment timeframe — before developing comprehensive investment and financing Plans.

This enables clients to make a genuinely informed choice — something sorely lacking in the majority of property and finance transactions. Should the client decide to implement our recommendations, we are able to provide a thorough follow-up service to support them in their goals. This may include negotiating a purchase on their behalf via auction or private sale.

Open market access; fee-based remuneration with full disclosure

Property Planning Australia does not sell property. We have full and open access to the Melbourne property market. Any recommendations we make regarding the location, style or market value of a specific property are based on our independent assessment of the property’s investment viability and its suitability for the client’s individual circumstances.

When we advise clients regarding property investment, our remuneration comes directly from them. The fee is a dollar amount, not a percentage of the purchase price. We have no vested interest in purchasing a property for anything more than fair market value. If we refer clients to other specialist practitioners during the course of business (e.g. conveyancers, building inspectors) we do not accept any form of remuneration for doing so.

If we believe it is in a client’s best interest to sell a poorly performing asset, we can recommend and appoint a real estate agent, and oversee all aspects of the transaction on the client’s behalf, giving them an independent view and a useful point of reference in the event of any difficulties. This is the only instance in which we work for the vendor. In this instance, we charge the client a fixed fee, not a percentage of the selling price. To avoid any conflict of interest, this fee is completely separate from any financial transaction the client has with the real estate agent, such as the selling commission and advertising costs. We do not receive any referral fees from the estate agent, and are not financially or structurally affiliated with them in any way.

Our Directors

Property Planning Australia’s Directors Mark Armstrong and David Johnston have substantial experience in the property advisory and finance industries respectively. **Mark** has almost 15 years’ experience in the property market, specialising in portfolio planning and property acquisition. He

ran his own property advisory company before establishing Property Planning Australia with David in 2004.

A Licensed Estate Agent and Member of the Real Estate Institute of Victoria, Mark is also a Member of CPA Australia and holds a Bachelor of Business—Accounting from RMIT.

David has almost a decade of experience in the banking and mortgage sourcing industries. After gaining experience with a major bank, he established and grew the successful mortgage broking arm of an insurance company. An accredited mortgage consultant, David is a member of the Mortgage Industry Association of Australia.

In keeping with our Directors' professional memberships and our status in the property and finance industries, Property Planning Australia is a Member of the Real Estate Institute of Victoria and the Mortgage Industry Association of Australia.

Setting industry standards

As Australia's first integrated property advisory and mortgage sourcing business, Property Planning Australia leads the industry in a range of innovative practices, including risk profiling for clients and thorough follow-up of property and finance transactions to settlement and beyond.

We believe the property advisory industry is in need of urgent reform at the industry, regulatory and consumer levels. We would be pleased to cooperate with the Working Party, REIs and other interested parties to achieve this.