

Property Investment Advise Working Party
Office of Fair Trading
GPO Box 3111
BRISBANE QLD 4001

Email: OFT-P&L@dtftwid.qld.gov.au

The solution is simple. I quote Maurice Unwin, President of the Mortgagee Association at the OFT March 1999 “The way forward” conference on the Gold Coast (taped and filmed by OFT) “forcing the banks to disclose the valuation would kill two tier marketing overnight”. Quick, simple and effective protection for consumers. Selling at exaggerated prices would be impossible.

Next, how to stop the Henry Kaye’s etc? By regulation every promoter has to give details of their successful background that will enable checking. Those with feet of clay would be quickly exposed drummed out of business.

Both of these require only minor Federal legislation amendments.

This saves over regulation which disadvantages the less well educated; restricts competition; greatly adds unnecessary costs which ultimately get passed onto the poor consumer and wastes millions of hours in unproductive compliance time.

LIST OF ANSWERS

1. The poor returns on superannuation and master trusts.
2. Investors have had poor appreciation of the downside risk where they have bought at inflated prices and the banks have hidden the valuation showing the truth to the investor.
3. 99% of property investment advice comes from licensed Real Estate Agents. Buyers are ignorant of the fact that these agents are in fact maximizing the price for the vendor and in fact do not represent the interest of the investor as price increases and returns for the investor decreases. If future developments would show an adjoining area as a better investment, this fact would be withheld from an intending purchaser by an agent because he does not sell in that area. Agents generally are restricted to specific geographic areas. Sprukers dominate the balance of the advisory market and at this stage their lack of credibility is not exposed by law. A minor amendment of the Corporations Act is required. The market needs graduates from the “Property Advisors” certificated course from TAFE. The Investors Club has prepared 99% of the content for this course. Should the committee decide that this would provide competition to Real Estate Agents and a source for “expert advice” as directed in the Corporations Act we can quickly get this approved to level 4 and introduced into TAFE.

4. Yes, fair and accurate – the promoters are able to hide their lack of credibility⁵. The Investors Club provides a list of past investors for intending investors to check our credibility. Perhaps this credibility list could be made compulsory by ASIC.
5. 99% of these problems would be impossible if the funders were forced to disclose the valuation. Paying too much would be impossible. If the valuation was too optimistic then the consumer would have redress via their insurance. Promoters of unsafe schemes would be bought undone as legislation forces them to reveal past successes. Their lack of past successes or little success would put the investor on their guard. The fact that they themselves would be going onto that list would ensure that the promoter makes no profit.
6. There is no training for property investment. Our TAFE course would fill this urgently needed void. Graduates would be bound to sign the “7 pillars of honesty”¹. In providing these undertakings OFT would have evidence to convict if in fact the wrong advice was given. Refer to OFT’s statements in 1999 “The way forward”². The section does not cover the main area of advice – that coming from licensed Real Estate Agents. By antiquated law these people protect vendors and are **anti-consumer**. In 1971, I campaigned to maintain the simple licensing requirements and against the current regulations as being anti-competitive and anti-consumer. My fears have been realized. The regulation should be scrapped and competition returned to the marketing of property.
7. It is bizarre that in 1971, Australian OFT moved to set up a monopoly to protect a marketing industry that was anti-consumer. Licensed Real Estate Agents promote the interests of **vendors**. To quote the Registrar in WA OFT “I am annoyed that as soon as a Real Estate Agent gets a whiff of competition, they call us in like guard dogs to close them down because they do not have a Real Estate Agents license”. I can deliver a lengthy paper on the total inadequacies of the licensing of Real Estate Agents. This includes why buyers agents (Real Estate Agents belated imitation of the pro-consumer stance of The Investors Club) are totally unskilled to protect consumers and promote their best interest. The poor old consumer simply pays 6% more than the vendor gets. A simple change to legislation would force them to in writing (so OFT can sue) to provide valid comparisons of different locations to substantiate their choice, provide comparison prices of similar properties in these areas and list the benefits of the ultimate choice and why these benefits should cause the consumer to buy. If it is for investment then the first year’s forward cashflow should be produced in detail and in general for the first 10 years².
8. Marketeers **are** licensed Real Estate Agents. A second valuation is simply extra unnecessary cost on the consumer and can not be obtained in the timeframe to allow withdrawal from the contract. Simply force the funders to provide the provisional valuation that the poor old consumer has paid for anyway! As prior to 1971, open up the marketing of property to anyone who has a trust account and is licensed to run that trust account with OFT. Honest

promises of benefits and --- values will be ensured by these being delivered in writing. Provide a list of all past clients ensures quality of advice and a guarantee of after sale service or lose future sales as these people contact disgruntled past buyers³. We need **less** regulation and more competition. Apart from the Club's proposed TAFE course there are no specialist property training courses graduating advisors. Yet, ASIC direct intending investors to consult such specialists – that don't exist.

9. I strongly disagree! The answer is not more regulation but simply enforce the disclosure of the valuation, the promoter's history, details of past clients and their promises of the benefits to be delivered in writing in a set format¹.
10. No.
11. Yes. Federal legislation requires a minor amendment to enforce the valuation disclosure. The State or the Federal Government can enforce the credibility of the promoter and the supply of the promises of benefits in writing. This could be via the Corporations Act or via the State's with a simple inclusion of these on the contract. For example, voluntarily, the Club will be providing an undertaking on purchase contracts to provide \$148,000 of free benefits to the purchaser. Failure to do so will offend State legislation.
12. More anti-competitive regulation is not required. The solution is simple – “disclosure”. Financial advisors have very lengthy training courses and are covered by extensive Federal legislation yet this does not protect buyers. Refer to the ASIC Choice Survey confirming 99% go for advice. Full disclosure would give potential investors the tools they need to adequately check out the validity of any new scheme.
13. As **licensed** Real Estate Agents **are** the problem, they should not be exempt from full disclosure. Are we about to repeat the mistakes of 1971 again? Are we going to protect the legal monopoly of Real Estate Agents selling property²? To quote the President of the REIQ “We have a legal, moral and fiduciary duty to promote and protect the interest of the vendor. (Two-tier marketing) Getting the highest price possible for the vendor is our job”.
14. Self-regulatory is simple. The ease of entry promotes competition. Provided valuations are **disclosed**. The Investors Club's full written disclosure of surrounding similar sales and benefits of the property are provided in writing and have led to over 6000 properties purchased with not one single complaint to ASIC or OFT from these fully informed purchasers. They also had the list of past investors to confirm our credibility and ensure themselves of good after sales service.
15. A new regulatory scheme would duplicate that of the financial advisors. This would not save property buyers. Refer to ASIC and Choices in depth survey of Financial Advisors confirming that only 1% gave correct advice! This is described as the most detailed regulatory and industry “safe guards”. Full disclosure is a simple solution.
16. Licensing is **not** the solution as proved by the licensing of Real Estate Agents in 1971. As proved by the licensing of Financial Advisors. Poor consumers will continue to wear all these on costs and continue to be ripped off (as they are when they visit 99% of financial advisors). Full disclosure is the simple

solution with breach covered under the 'criminal code'. These proposals pass the 'common sense test' and do not cause significant establishment and ongoing administration costs for both arms of Government.

17. No expensive, complicated new regulatory regime is needed. Simply amend existing State and Federal Legislation to enforce full disclosure. This will also satisfy the working party's concern. The Government is not doing 'insufficient and too slow'.
18. We need deregulation and a return to pre-1971 Real Estate selling laws. The concept of the government legislating to protect and promote the interest of sellers looking after vendors not consumers is bizarre and dinosaur legislation. It was conceived before the age of consumerism by an elite body that feared competition. The very legislation they sneaked in was contradicted by the consumer protection legislation of the Trade Practices Act that followed 2 years later.

The Corporations Act directs property investors to get expert advice. It cannot say who can give this expert advice – because there is no one! The Investors Club has a TAFE course standing by ready for OFT and ASIC recognition. Graduates would be forced to give this expert advice under PI protection. They would have powerful computer programs and procedures to fully inform an intending investor. The Investors Club in free of charge setting this TAFE course up will be directly – increasing competition with The Investors Club. The reason that we are doing this is that we are putting the interests of the millions of property consumers first and not the interests of The Investors Club. I am sure the working party share the same common goal.

Buyers agents are less than 0.25% of Real Estate Agents and are simply a belated knee-jerk reaction by the Real Estate Industry to mimic the success of The Investors Club. The result is an unprofessional service that simply adds to the costs worn by the unfortunate buyer. Compulsory full disclosure forced by the criminal code would greatly increase this level of service.

ASIC does not have the knowledge of property to efficiently run a regulatory property regime. 18 months ago, I put a simple property scheme to ASIC to approve. We have a successful track record of making investors rich by using their deposit to start up a project to remove the need for a greedy developer. Our proposition to ASIC was a simple one, can our investors put their deposit together, pool it in a Solicitors Trust Account, buy a development site with The Investors Club giving them a legally binding contract to supply the end product at an agreed good price. The clients interests are protected by an agreed price contract protected by State legislation. Their funds are protected by State legislation on Trust Accounts while the money is being pooled. This simple question has taken 18 months with ASIC passing it from officer to officer, from state to state and are unable to confirm that we can proceed to help our investors! These opportunities are mostly at auction and that

proposal put to ASIC was snapped up by my own developer within the 28 days. This period has long passed as has the opportunity. The Federal Government does however have the power to force funders to disclose the valuations! A quick, simple solution.

As per page 58 of your discussion paper, the ACCC could simply revise its “fair and square” to include the need for full disclosure as detailed above and remind agents that a breach is enforced under the criminal code. Again a quick, simple, inexpensive solution to a major problem.

I have been involved in Real Estate since 1968 as a buyer, seller and RE Agent. I have done subdivisions and built homes, townhouses and units. I taught myself conveyancing and have done 644 conveyances myself. At my request I was investigated by ASIC believing they would give me a clearance which I could show a cheap journalist who had done a beat-up article. After an intensive 6 month investigation and the opening of all of our records and supply of over 4000 documents, ASIC made the following statement “We admit that we have no complaint from any consumer nor any evidence of financial impropriety or malpractice”. The Judge noted “Your case only shows contented investors” (Note in the year ASIC had received 350 complaints against property sales, 70 of which were in relation to Henry Kaye – nil against The Investors Club). Finding no marketer activity, ASIC by surprise had taken objection to our very successful JV and NT?NP! programs. ASIC claimed that these should be “registered with ASIC”. The court did not agree with or accept ASIC’s application but did accept our undertaking that we would cease these schemes until we had applied to ASIC for “registration”. We are still waiting! Over 2000 contended investors were harassed by ASIC and not one complaint. This is obviously a great endorsement of The Investors Club and this application is promoting full disclosure as is successfully applied by The Investors Club. I am more than happy to present myself before the working committee in any state.

The Club has given advice on the purchase of over 6000 properties over the last 10 years. ASIC will confirm that after a 6 month investigation there is not one complaint from any consumer nor any evidence of financial impropriety or malpractice. Proof positive that the consumer protection ideas of the Club work.

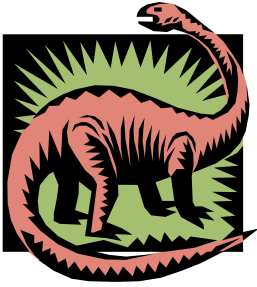
To ensure that you receive this email, I have not enclosed the many attachments that I could. Could you please advise how best I can get these to you?

Yours faithfully

Kevin Young
Club President

Footnotes

1. The 7 pillars of honesty is attached.
2. OFT video recorded this presentation. The female OFT officer stated that wild promises of values are given verbally not in writing. When later the victim realizes this OFT have nothing in writing to mount a case.
3. Club experience has shown that people are more than happy to have their name on this list. They are well aware of the privacy disclosure laws but see big advantages in helping future buyers but more importantly knowing that them being on the list will guarantee them good quality after sale service.
4. Refer to page 57 of your discussion paper. The whole Quinlivan case would not have happened had the bank disclosed the valuation. There would be no case for the CBA to answer had they given a valuation. The huge costs borne by the taxpayers would not have happened.
5. APRA is introducing a test for "Fit and proper" for the banks senior management to remove the possibility of failure of financial institutions due to incompetence, reckless or improper risk taking.



Help bring these 19th Century laws into the age of 21st Century Consumerism!

Current legislation regulating the Real Estate industry in Australia is a **DINOSAUR!**

But, a once in a lifetime opportunity exists for **YOU** to help change this Act which protects the sole remaining monopoly servers left in Australia.

If the real estate industry were required to adopt **Kevin Young** and **The Investors Club's SEVEN PILLARS OF HONESTY** shown below, the legislation could be made simple to follow and would finally benefit the poor old consumer. We strongly encourage you to consider them when you are required to vote for change.



Full disclosure of the valuation report by the bank to be given to the client (who has usually paid for it anyway). This enables consumers to ensure they are borrowing what it's worth.



Full written disclosure of all sales made within a 1 km radius in the previous 12 months. This ensures consumers don't pay over the odds in the area.



Real Estate agents and other property marketers must make their existing entire client base available to intending purchasers to obtain references as to how they were treated.

How long would the "bad guys" last?



Three written rental appraisals by three local agents must be provided if the purchase is for investment purposes. This ensures consumers can expect a reasonable rate of return and helps cut out the 2- and 3-tier marketers.



Prior to 1971 anyone could sell property (and, if they own it, they still can today - they don't have to use a third party to "assist" them). A monopoly selling group is an illegal restriction of trade and anti-competitive **IN BREACH OF THE HIMLER REPORT!**



Bidders at auctions must have a bidding card and no dummy bidders accepted.



All parties involved in the sale of the property must fully declare their commissions - this includes the vendor, seller, solicitor etc.

So, please take this opportunity to finally get rid of the SHARKS in the industry!

