



Law Council
OF AUSTRALIA

The Secretary
Parliamentary Joint Committee on Corporations and Financial Services
Suite SG.64
Parliament House
CANBERRA ACT 2600

Dear Ms Bachelard

Inquiry into regulation of property investment advice

Thank you for your letter of 15 December 2004.

The Corporations Committee of the Business Law Section of the Law Council of Australia ('the Committee') is delighted to take up the Parliamentary Joint Committee's invitation to make a written submission in relation to the Inquiry.

The Committee considers that it would be desirable for property investment advice to be regulated in an equivalent matter to financial product advice.

The Committee considers that the absence of such equivalent regulation provides an incentive for certain forms of activity to be undertaken in relation to property investment advice that would not be possible in relation to financial product advice.

The Committee would support a referral of power by the States and Territories to enable the enactment of Commonwealth legislation and the uniform administration of property investment advice laws by the Australian Securities and Investments Commission. This would enable uniform and consistent administration both geographically between States and Territories but also in relation to real estate and financial products.

The policy logic underpinning the financial services reform legislation was the consistent treatment of different types of financial services and products. The Committee considers that this logic is equally applicable to different forms of

investment advice and there is no obvious reason why property investment advice should be treated differently from other forms of investment advice. The Committee considers that the current differential treatment is a matter of historical accident due to jurisdictional limitations rather than having the benefit of any compelling policy foundation.

The Committee does note, however, that it believes there is no reason to believe that regulation of real estate transactions generally and real estate agents in particular is defective or in need of national uniform legislation. The usual activities of real estate agents are, at least in the Committee's view, adequately regulated by existing legislation in each of the various States and Territories.


The Committee acknowledges that there may be difficulties in drawing a dividing line between what is or is not property investment advice and that therefore any proposed new measures may have a wider area of coverage than is strictly necessary to deal with the problem of "*property spruikers*". In this regard, in the Committee's view it is likely that an exception to a national uniform property investment advice regime that related to advice that was *truly* incidental to the conduct of business by a licensed or otherwise authorised real estate agent (analogous to certain exceptions under the FSR regime) would in principle be an adequate solution to this potential definitional problem.

The Australian Property Law Group of the Legal Practice Section of the Law Council endorses the views of the Committee outlined above. However, owing to time constraints, the submission has not been reviewed by the Council of the Law Council of Australia.

The Committee would be happy to give evidence at a public hearing should that be the wish of the Parliamentary Joint Committee.

If you would like to discuss this submission please contact the Chairman of the Committee, John Keeves, on (08) 8239 7119 or john.keeves@jws.com.au.

Yours sincerely,


Peter Webb
Secretary-General

17 February 2005