25 February 2005

Dr Anthony Marinac
Acting Committee Secretary
Parliamentary Joint Committee on Corporations and Financial Services
Suite SG.64
Parliament House
Canberra ACT 2600

FINANCIAL PLANNING ASSOCIATION
of Australia Limited
ABN 62 054 174 453

Member freecall 1800 337 301
Consumer freecall 1800 626 393
Fax (03) 9627 5280
Email fpa@fpa.asn.au
www.fpa.asn.au

New South Wales
GPO Box 4285
Sydney 2001
Level 6, 17 Castlereagh Street
Sydney 2000
Tel (02) 9223 0900
Member freecall 1800 815 168
Fax (02) 9223 0070
nsw@fpa.asn.au

Queensland
GPO Box 572
Brisbane 4001
Tel (07) 3839 2427
Fax (07) 3839 3172
qld@fpa.asn.au

South Australia
67 King William Road
Unley 5061
Tel (08) 8291 8522
Fax (08) 8271 6281
sa@fpa.asn.au

Tasmania
PO Box 1245
Rosney 7018
Tel (03) 6244 7699
Fax (03) 6244 7688
tas@fpa.asn.au

Victoria
PO Box 109 Collins Street West
Melbourne 8007
Level 8, 570 Bourke Street
Melbourne 3000
Tel (03) 9627 5200
Fax (03) 9627 5280
vic@fpa.asn.au

Western Australia
PO Box 317
West Perth 6872
Tel (08) 9486 1788
Fax (08) 9486 1799
wa@fpa.asn.au

Dear Dr Marinac

COMMONWEALTH REGULATION OF PROPERTY INVESTMENT ADVICE

The Financial Planning Association of Australia Limited (FPA) is pleased to make a submission to the current inquiry by the Parliamentary Joint Committee on Corporations and Financial Services (PJCCFS).

The FPA is the peak professional association for the financial planning sector in Australia. With more than 12,000 members organised through a network of 31 Chapters across Australia and a state office located in each capital city, except Darwin, the FPA represents qualified financial planning practitioners who manage the financial affairs of over five million Australians with a collective investment value of more than $560 billion.

Many of the issues being dealt with in the current PJCCFS inquiry were raised in the discussion paper released last year by the Queensland Department of Fair Trading on regulation of property investment advice. Consequently, the FPA would like to provide the Committee with a copy of the submission which the FPA made in response to the discussion paper (copy attached).

As explained in our 28 October 2004 submission, the FPA would favour a new national regulatory regime for property investment advice that is the responsibility of the Commonwealth based on the principles adopted in the *Corporations Act* 2001 relating to financial services regulation.

Any new regulation would need to consider the broad scale, scope and variety in the property sector in order not to disadvantage any long term professionals in the industry or financial planners who may already be licensed to recommend financial products regulated by the Corporations Act that have property as an underlying asset. This could include an exemption to the new legislation for real estate agents to the extent that they are already regulated for the provision of property investment advice. This would be to avoid a double regulatory burden.

In proposing such a national regulatory regime for property investment advice, we are **not** implying that the FSR regime should simply be duplicated. The FPA is **not** in favour of regulation for regulation's sake; nor of increasing costs to consumers where there is no corresponding consumer protection benefit. In proposing a similar regulatory regime as applies to financial services, we would emphasise the more positive features of an FSR-like regime:

- consumer protection;
- corporate governance;
- promotion of professional conduct;
- standard (and consumer-friendly) disclosure obligations - so that the consumer is in a better position to make an informed choice;
- a mandated 'paper trail' for advice;
- uniform competency requirements; and
- licensee's supervisory requirements.

We believe that the first and key priority is the establishment of an effective nationally uniform regulatory regime for property investment advice, with the actual vehicle to achieve the first priority being the second consideration. However, the FPA believes that it would be more efficient if the national regime was achieved by Commonwealth legislation rather than a co-ordinated uniform approach. As financial services is governed by national legislation it would be logical that the counterpart regime for property investment advice be similarly regulated, with ASIC as the regulatory authority.

If you would like to discuss any of the issues raised in this submission, please contact FPA's Policy and Government Relations Manager, John Anning (tel: 02 9220 4513; email john.anning@fpa.asn.au). If required, the FPA would be pleased to provide representatives to appear before the Committee during hearings related to this inquiry.

Yours sincerely

Kerrie Kelly
Chief Executive Officer

28 October 2004

Property Investment Advice Working Party
Office of Fair Trading
GPO Box 3111
Brisbane QLD 4001

FINANCIAL PLANNING ASSOCIATION
of Australia Limited
ABN 62 054 174 453

Member freecall 1800 337 301
Consumer freecall 1800 626 393
Fax (03) 9627 5280
Email fpa@fpa.asn.au
www.fpa.asn.au

New South Wales
GPO Box 4285
Sydney 2001
Level 6, 17 Castlereagh Street
Sydney 2000
Tel (02) 9223 0900
Member freecall 1800 815 168
Fax (02) 9223 0070
nsw@fpa.asn.au

Queensland
GPO Box 572
Brisbane 4001
Tel (07) 3839 2427
Fax (07) 3839 3172
qld@fpa.asn.au

South Australia
67 King William Road
Unley 5061
Tel (08) 8291 8522
Fax (08) 8271 6281
sa@fpa.asn.au

Tasmania
PO Box 1245
Rosney 7018
Tel (03) 6244 7699
Fax (03) 6244 7688
tas@fpa.asn.au

Victoria
PO Box 109 Collins Street West
Melbourne 8007
Level 8, 570 Bourke Street
Melbourne 3000
Tel (03) 9627 5200
Fax (03) 9627 5280
vic@fpa.asn.au

Western Australia
PO Box 317
West Perth 6872
Tel (08) 9486 1788
Fax (08) 9486 1799
wa@fpa.asn.au

PROPERTY INVESTMENT ADVICE DISCUSSION PAPER

The Financial Planning Association of Australia Limited (FPA) is pleased to make a submission in response to the Discussion Paper issued by the Ministerial Council on Consumer Affairs Working Party on Property Investment Advice. The paper sought views about the regulation of advice relating to investment in real estate and the scope and intensity of any new regulatory scheme.

The FPA is the peak professional organisation for the financial planning sector in Australia. With approximately 14,000 members organised through a network of 31 Chapters across Australia and a state office located in each capital city, except Darwin, the FPA represents qualified financial planners who manage the financial affairs of over five million Australians with a collective investment value of more than $560 billion.

Introduction

As evidenced by material in the discussion paper and comment we received from FPA members, the Australian community has a strong and growing appetite for investment in property, particularly residential property for investment purposes. This strong interest in property can be problematic when it is coupled with a lack of education and false perceptions about property as an investment.

The property market is not homogenous or indexed which can help fuel the perception that the property market is not volatile and therefore virtually 'risk free'. This situation has been further promoted by the trend of the property market over recent years. Investors see or are told about instant profits that people made without significant risk. Those who are currently in the stage of life where they are looking to accumulate wealth are being targeted with offers of opportunities to create rapid wealth through property.

The FPA is concerned that the general community has little appreciation or knowledge of the downside risks of property as an investment and the associated financing arrangements. The lack of relevant consumer education and the potential for poor advice in relation to property investment may lead to confusion and the possibility of a herd mentality approach to these investments. There also seems to be a focus by property advisers on short term or one-off returns that do not provide a true indication of the volatility, risks and returns experienced in the property market over the long term. This means that investors are not well placed to make considered and balanced financial decisions.

Consumers may mistakenly believe they are already receiving regulated financial product advice when it relates to real property or the associated financing arrangements, when in fact due to lack of uniformity in state/territory regulation and blurred dividing lines regulating the sector, Australians are ill protected.

The effect on the community of ill advised or inappropriate property investment could spread more widely than what is traditionally seen as the investment community. In particular, the retirement plans of many Australians could be detrimentally affected by the recent spate of activity in the property market if their investments are revealed to have been ill advised or misplaced.

Regulatory Framework

An investment in property is often the most significant financial commitment any Australian will undertake. Such investments frequently have related financing arrangements which add complexity and ongoing financial obligations whose impact needs to be considered. Consequently, the scope of regulation needs to extend beyond the actual purchase to the financing business associated with property.

When investing in real property, Australians hope to enjoy a capital return, a yield and any possible tax advantages available from the investment (additional factors are of course relevant when the property is bought as the purchaser's residence but this type of property purchase is outside the scope of this submission). In this regard, there is little difference between investing in real property to investing in what the *Corporations Act* 2001 considers a financial product. People making property investments should be entitled to the same protections and comforts that they would receive when purchasing a financial product under the financial services regime contained in the *Corporations Act* 2001. These important and compulsory protections include membership of an external dispute resolution service, professional indemnity insurance by the adviser, having compliance structures and appropriate resources in place, and specific educational training requirements.

Real estate agents are currently subject to state/territory regulation. However, there are few requirements to ensure proper training, including ongoing training for those advising on real property for an investment purpose. Whilst advisers working in the real property market may put their client's interests first, the regulatory framework is not in place to ensure clients have the protection they deserve when investing in real property. Therefore, whilst consumers may envisage both real property and financial product investments to be made for the same purposes of wealth creation and financial management, there is a considerable lack of uniformity in the standard and regulation offered to protect investors.

Disclosure is another major issue that needs to be considered in the real property market. Matters such as fees, hidden commissions, interrelationships and other acts and representations currently are not effectively regulated. Some of these arrangements may also have excessive fees/commissions that are not appropriately disclosed and this situation represents a clear gap in consumer protection. As applies with financial services, investors in real property should have all the information disclosed to them that is necessary in order to make an informed decision.

Real property advice for investment purposes needs to be comprehensive and include goal setting, budgeting and structural advice before a potential investor considers any investment. The possible merits of property as part of a balanced portfolio are not being disputed. Rather the issue is the inconsistency between the regulation of the advice offered for different components of an investor's portfolio. Direct property can be a large component of a portfolio and under the current regime can be entered into after receiving unqualified advice or potentially worse, a marketing or sales campaign. For example, FPA members are aware of instances where persons without an Australian Financial Service Licence (AFSL) have recommended that clients sell holdings of financial products in order to finance property investments without appropriate financial advice having been provided by the non AFSL adviser.

The focus of any advice related regulation should be on protecting the interests of consumers and creating an efficient and effective market for the provision of advice. The current regulatory framework does not provide a "level playing field" and puts those who are licensed to provide investment advice under the *Corporations Act* 2001 at a considerable competitive disadvantage against those who are providing unregulated investment advice in the real property market. The requirements of an Australian Financial Services Licence attach extensive obligations to the provision of product related advice from a compliance perspective in the interests of consumers. These obligations come at a cost that is not borne by those providing unregulated advice.

The FPA is of the view that, as has been suggested in the discussion paper, current government objectives and community expectations are not being met and cannot be met within the current regulatory framework.

Reform

The aim of any new regulatory scheme should be to enable consumers to receive quality investment advice, irrespective of the sector they are considering investing in. A consumer should be able to have confidence that their adviser, whether dealing in property or financial products, will be appropriately qualified with appropriate obligations relating to full disclosure and conduct.

The FPA favours the introduction of a new national regulatory regime for investment advice relating to real property that is the responsibility of the Commonwealth, based on the principles adopted in the *Corporations Act* 2001 relating to financial services regulation. Any new regulation would need to carefully consider and appropriately provide for the broad scale, scope and variety in the property sector and not disadvantage professionals in the industry or financial planners who may already be qualified and licensed pursuant to the *Corporations Act* 2001 to recommend financial products that have property as an underlying asset.

This could include an exemption to the new legislation for real estate agents to the extent that they are simply "dealing" in real estate and also to the extent that they may already be regulated for the provision of property investment advice pursuant to the *Corporations Act* 2001. This potential exemption would seek to avoid a double regulatory burden. Appropriate transitional arrangements would need to be developed for any new national regulatory regime. There may be, for example, scope for co-operation between financial planners and real estate agents whereby an authorised financial planner provides a sign-off on an investment strategy made by a real estate agent which involves real property.

Possible requirements to satisfy training and experience criteria could include obligations similar to ASIC's Policy Statement 146 Licensing: Training of Financial Product Advisers (PS146). There would be potential for real estate and other industry bodies to develop courses for PS146 accreditation and Continuing Professional Development (CPD). There may also be scope to develop tools such as voluntary industry codes to work in conjunction with the new national regime.

Conclusion

Property is a favoured investment vehicle for Australians and the sector has seen substantial growth in terms of the volume of investment and provision of related services. As with many investments, there is a degree of risk attached to an investment property. However, a more educated public that has protections in place against misleading activity and unqualified advice, through appropriate regulation, would be better able to provide for their future.

It is important that consumers do not mistakenly believe they are already receiving regulated financial product advice when it relates to real property or associated financing arrangements, when in fact due to a lack of uniformity in state/territory regulation and blurred dividing lines regulating the sector, Australians are ill protected.

A national regulatory scheme will help ensure that property investors enjoy the services of qualified advisers who provide considered advice and make appropriate disclosures.

Thank you for the opportunity to comment on these matters and the extension provided for the FPA's response.

If you would like to discuss any of the issues raised in this letter, please contact our Policy and Government Relations Manager, John Anning (tel: 02 9220 4513; email john.anning@fpa.asn.au).

Yours sincerely

Kerrie Kelly
Chief Executive Officer